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THE VETO POWER

IN THE

UNITED STATES.

WHAT IS IT?

BY J. H. BENTON, JR.

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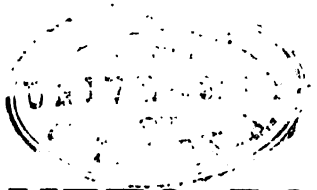


THE VETO POWER

IN THE

UNITED STATES.

WHAT IS IT?

In May, 1887, the Legislature of Massachusetts passed a bill for the division of the town of Beverly, which was duly presented to the governor, who returned it to the house of representatives on the 21st of May, with the following communication: —

I herewith return to the house of representatives, where it originated, a bill entitled "An act to incorporate the town of Beverly Farms," together with my objections thereto.

If it involved only the question of the division of the town of Beverly, I should hesitate to set up my opinion against that of the legislature; but under your recent investigation, now familiar to the public, it appears that very large sums of money, altogether disproportionate to the honest necessities of the case, have been raised and expended in the promotion of the passage of the bill.

While, of course, no member of the legislature has taken, or would take, money for his vote, yet some $20,000 have been spent to indirectly influence the action of the legislature. It is no excuse that such things, or worse, have happened before without exposure. This time the abuse has been investigated, exposed, and rebuked in scathing terms by the committees of both houses.

I regard it as my duty to the commonwealth, and to the maintenance of a wholesome public sentiment in behalf of legislation which shall be above suspicion, to act upon the reports made by these committees and adopted by their respective houses, and to strike emphatically at the evil thus unearthed. Not to do so is to excuse and encourage a monstrously bad and corrupting practice. I believe that the legislature, which had committed itself to the bill before exposure of the methods of its promotion, will agree with me that it is better that the executive, approaching it for the first time and finding it tainted with offensive furtherances, should veto it. I cannot doubt, too, that on reflection the committee which seeks division, and to which we look for so many of the elements of good-citizenship, will gladly sacrifice, or at least delay, any present convenience for the sake of an emphatic lesson in the public behalf.

If, as seems to be true, both sides have been guilty (which almost makes me sympathize with the judge who wanted to decide against both parties), so much the worse; two wrongs do not make a right. It is a just as well as an equitable maxim, that those on whom is the burden of making out a case shall come with clean hands, and not seek to excuse the lack of them on the ground that an opponent's are soiled. It seems a fitting opportunity to enforce the principle that, in order to ensure legislation, the thing to do is to show a good case on its merits; and that it is not only not necessary, but detrimental, to rely on pecuniary influences such as have been disclosed in the committee's reports.

I am sure that the pernicious system therein set forth is offensive to nobody so much as to the members of the legislature, and that you will heartily co-operate with me in hitting it a blow in the intersst of more decent methods, and in furtherance of the suggestion in your own reports on the subject to which I call attention.

Your committee closes its report with these words: "Legislation cannot be pure unless free and untrammelled by insidious influences. These influences, however, wherever or by whomsoever exerted, should be and *must* be emphatically and sternly condemned."

The senate committee says, "It is to be greatly regretted that

there has been a growing demoralization in the methods pursued in promoting private bills and private interests before the general court, deserving the strongest condemnation and the most effective remedy."

"The strongest condemnation and the most effective remedy" I can apply is a veto.

If the system thus condemned is to prevail and to be justified by executive approval of bills to which it has been most notoriously and offensively applied, then the lobbyist will understand it is an accepted and permissible system, involving no risk except that of being called hard names in a report.

The reputation of the Legislature of Massachusetts for honesty and probity is deservedly so high that it should not miss the opportunity for reconsideration, with a view to denounce and condemn in the most emphatic manner anything that tends to discredit it.

Some question was made at the time as to whether this communication was a valid exercise of the governor to negative a bill. But when the house reached the consideration of the bill and of the message, the question was put by the speaker: "Shall the bill pass notwithstanding the objections of his Excellency the governor?" and 113 members voted in the affirmative and 99 in the in the negative, so that, under the provisions of the constitution requiring a vote of two thirds of the members present to pass the bill against the objections of the governor, the bill failed of a passage.

In October, 1887, the Legislature of New Hampshire passed an act entitled, "An act of in amendment of chapter 100 of the laws of 1883, entitled 'An act providing for the establishment of railroad corporations by general law,'" which was duly presented to the governor, and returned by him on the same day to the house, with the following communication: —

STATE OF NEW HAMPSHIRE,
EXECUTIVE DEPARTMENT,
CONCORD, October 18, 1887.

To the House of Representatives:

I hereby return the house bill entitled "An act in amendment of chapter 100 of the laws of 1883, entitled 'An act providing for the establishment of railroad corporations by general law,' without my signature.

It is with great regret that I feel called upon to exercise the power given to the executive by the constitution, and withhold my approval from a measure which has passed both branches of the legislature by decided majorities after a thorough and able discussion covering a period of nearly four months, and prolonging the session far beyond the usual limits, at great expense to the state.

Without entering upon the intrinsic merits of the measure to express any opinion upon a question of such vital importance to the state, and upon which the people may wish to be heard, I am moved to object to the bill for the reason that corrupt methods have been extensively used for the purpose of promoting its passage. The two powerful railroad corporations which have antagonized each other in the contest have had in attendance a paid lobby of unprecedented magnitude, and, as a consequence, the representatives have been persistently followed and interfered with in the free performance of their legislative duties.

The widespread rumors and scandalous tales of bribery and corruption which have been freely current during the progress of the contest, finally materialized through charges preferred in the senate, and also in the house, after the passage of the bill. By the courtesy of the chairman of the judiciary committee of the house, upon my request, I have received the official records of the testimony thus far taken by that committee in their investigation of the charges. The provision of the constitution limiting the time within which the executive veto may be interposed, together with the probable early adjournment of the legislature, forces me to take action upon the measure without waiting for the completion of the investigation and report of the committee. The evidence thus far obtained is, in my opinion, sufficient to justify the action here taken.

While I am glad to be able to say that no evidence has yet been produced to show that any member of the legislature has been unfaithful to his trust and oath of office, yet to my mind it is conclusively shown that there have been deliberate and systematic attempts at wholesale bribery of the servants of the people in this legislature.

It matters not that both of the parties are probably equally guilty. The fact that this bill, if it should become a law, would go on to the statute book, carrying with it the suspicion that it had been fraudulently enacted, is sufficient reason why it, and all legislation similarly effected, should be condemned.

The danger of permitting the use of such methods as have been here employed is too obvious to require extended comment, and the most effectual way to elude such practices is to have it understood that no bill attempted to be passed by such means can become a law.

When the promoters of a measure see fit to offer bribes to members, they cannot be allowed to excuse themselves on the ground that their offers were not accepted. If it comes to be understood that unsuccessful attempts of this nature will not imperil the passage of a bill, such offers will become much more frequent. If the offer is accepted, neither party will be likely to disclose the fact. If it is rejected, it is in this view to be considered as of no consequence, and hence no harm would be done to the prospects of the bill.

The bare statement of such a doctrine is its best answer. In degrees as these corrupt practices are allowed to pass unnoticed, the moral sense of not only legislators but also of the people will become dulled to their enormity, and in the end make government a farce and an object of contempt.

As the honor of the individual should be above price, so in a larger sense should the honor of the state be jealously guarded. Being strongly impressed that the honor and good name of the state and its legislature are involved in countenancing the methods that have been practised to secure the passage of this measure, and that all other considerations should be set aside, and feeling that my duty is plain, I veto the bill.

CHARLES H. SAWYER,
Governor.

The question was at once raised whether this communication, which was evidently modelled upon that of the governor of Massachusetts, was a valid exercise of the power of the executive to negative the bill, and on the 4th of November, when the house reached the consideration of the bill and of the communication from the governor, it passed a preamble and resolution as follows: —

Whereas a bill entitled "An act in amendment of chapter 100 of the laws of 1883, entitled 'An act providing for the establishment of railroad corporations by general law,'" which originated in the house of representatives, duly passed both houses of the general court, and was presented to the governor on the eighteenth day of October, 1887, according to the requirement of the constitution, and the governor on the same day returned said bill to the house in which it originated, without his signature, and therewith transmitted a communication in the following words: —

[Here was inserted the message of the governor to the house.]

And whereas it appears by the aforesaid communication of the governor that his excellency did not examine or consider the intrinsic merits of said bill, and did not form or express any opinion upon a question of such vital importance to the state as that involved in the merits of said bill, and did not in said communication state any objection or objections to said bill;

And whereas the constitution of this state provides that "Every bill which shall have passed both houses of the general court shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it." And further, that "If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature by their adjournment prevent its return, in which case it shall not be a law;"

And whereas it is the sense of this house that the true intent of the constitution in requiring the governor, in case he does not approve a bill which shall have passed both houses, to return his objections to it with the bill to the house in which it originated, is to give the two houses the benefit of those objections, and the reasons and arguments adduced by him in their support, to aid them in their further deliberations upon the bill when they come to reconsider it in compliance with the requirement of the constitution, and it is the constitutional right of the two houses to have the objections of the governor to the merits of a bill returned without his signature to aid them in its reconsideration, therefore no reconsideration such as is required of them by the constitution can be had by the two houses without a statement of those objections;

That each house of the general court is invested, by the constitution, with ample power for the protection of its own integrity, honor, and dignity, and the safety and honor of its members, and no other department of the government is charged with that duty or intrusted with that power;

That the independence as well as integrity of the two house of the general court must be protected in order that the integrity of the scheme of government established by the constitution be preserved; and therefore, in the discharge of the responsible duties of his office, each member is answerable to the house to which he belongs and to the people of the state, and not otherwise;

That inasmuch as the only reasons which appear in the aforesaid communication of his excellency the governor, why he returned the said bill without his signature, are such as necessarily imply that the governor is invested with power to inquire into the conduct of the two houses of the general court, and further imply that the governor is charged with the duty of protecting the integrity, honor, and dignity of the two houses of the general court and their members, those reasons are not such as are contemplated and required by the constitution, and are therefore of of no validity or legal effect;

And whereas it is the sense of the two houses of the general court that the true intent of the constitution in requiring the governor, when he returns without his signature a bill which has

passed both houses, to return therewith his objections, is to enable the two houses, upon reconsideration of the bill, to remove and obviate those objections should they deem it wise to do so;

That the assumption by the governor of power to negative a bill by returning it unsigned, without stating any objections to its provisions, necessarily implies a power in him practically equivalent to an absolute and arbitrary veto, inasmuch as the two houses, without being informed what his objections are, could not intelligently reconsider it, and so, in the opinion of this house, works a fundamental and dangerous change in the organization of the government by changing the constitutional distribution of its powers between the two houses and the governor;

That the veto power of the governor, as given and defined by the constitution, is strictly limited to approving or disapproving bills which have passed both houses of the general court, upon reasons appertaining to the provisions thereof; and in case of disapproval, the statement of those reasons by way of argument to the house in which the bill originated, in order that such reasons and arguments may be duly considered and given their just weight when the bill comes to be duly reconsidered by the two houses in the performance of the duty enjoined upon them by the constitution;

That in the exercise of the veto power of his office the governor is not invested with authority to examine into or pass judgment upon the conduct or motives of either house, or of the members of either house; and when he assumes to do so his action constitutes a violation of that article in the bill of rights which declares that "In the government of this state the three essential powers, to wit, the legislative, executive, and judicial, ought to be kept as separate from and independent of each other as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity," and is of no effect;

And whereas it is the sense of this house that the omission of the governor to examine and consider the aforesaid bill, and thereupon to determine whether he approved or disapproved it, and his omission to return with said bill a statement of his objections thereto, were omissions of acts made indispensably necessary by the constitution to the withholding of his signature therefrom, and

that inasmuch as more than five days (Sundays excepted) have elapsed since said bill was presented to the governor, and the same has not been returned by him to the house in which it originated, with his objections, according to the true meaning and intent of the constitution, and the legislature has not in the mean time adjourned, said bill has become and is a law without the signature of the governor:

Therefore, be it *Resolved* by the house of representatives, that no further action be taken by this house upon the bill entitled "An act in amendment of chapter 100 of the laws of 1883, entitled 'An act providing for the establishment of railroad corporations by general law;'" but that said act and this resolution be transmitted to the secretary of state, to the end that said act be published with the other laws passed at this session.

Subsequently it was claimed in legal proceedings in the Supreme Court of New Hampshire that the house of representatives were right in treating the communication from the governor returning this bill as not an exercise of his constitutional power to negative the bill, and that the bill became a law notwithstanding it. The case in which that question was raised is still pending, and it is claimed by one party thereto that it is immaterial to the issue raised in it whether the bill became a law or not. If the Court should be of this opinion, the question as to the effect of the governor's message returning the bill will not be decided in that suit. The importance of the question, however, is obvious, for if under the United States Constitution and the state constitutions the executive, in the exercise of the power to approve or disapprove a bill which has passed both branches of the legislature, can refuse to examine into the merits of the bill and negative it without entering upon its merits by the mere statement of objections which have nothing to do with the provisions of the bill itself, the power of the executive with

reference to the action of the legislature is much greater than has been heretofore understood.

The following are substantially the suggestions made to the Supreme Court of New Hampshire in the argument of the question raised before them with reference to the effect of the communication of the governor of that state above set forth. It is thought that, in so far at least as they embody the history of the provision giving the executive the power to revise and negative legislative acts in the United States, and the discussions and comments of others upon that subject, they may be of general interest.

It appears that this bill was enacted by both houses of the General Court of New Hampshire and duly presented to the governor for his approval, and that the legislature did not adjourn within five days (Sundays excepted) after it was thus presented to the governor. The bill therefore became a law unless the communication which the governor sent to the house of representatives on the 18th of October was an exercise of the power given to the governor by article 44 of the constitution to disapprove a bill and return it with his objections to that house in which it originated. If this communication was not an exercise of the power of revision and negative given by this article of the constitution, the bill became a law on the twenty-fifth day of October, as alleged in the defendant's answer.

This question must be decided by the judiciary, for it is simply a question of whether certain acts of the executive, which are of record, are such acts as the constitution provides shall prevent a bill duly enacted by both houses of the general court from becoming a law. The house in which the bill originated declared by a formal resolution that in its opinion these acts did not prevent the bill from

becoming a law. The question is whether these acts thus shown by the record are such acts as the constitution provides shall have that effect, and that is a pure question of law which the judiciary must pass upon when properly raised in a cause before them, precisely as they must pass upon the legal effect of any other facts in the case.

"As the judges are bound to take notice of a general law, so it is their province to determine whether it be a statute or not."

Bolander v. *Stevens*, 23 Wend. 103.
Gardner v. *The Collector*, 6 Wall. 499.
Harpending v. *Haight*, 39 Cal. 189.
People v. *Hatch*, 19 Ill. 283.
Ottawa County v. *Perkins*, 94 U.S. 260.
Tarlton v. *Peggs*, 18 Ind. 24.

This communication was a statement of the objections of the governor to signing the bill, but it was not an objection to the provisions of the bill. The communication itself states that the governor *expresses no opinion upon the merits of the measure, that is, of the bill*, but that he is moved to object to the bill because "corrupt methods have been extensively used for the purpose of promoting its passage," and because "the representatives have been persistently followed and interfered with in the free performance of their legislative duties." The communication is not even an objection to the conduct of the legislature or of any member of it, for it carefully states "that no evidence has yet been produced to show that any member of the legislature has been unfaithful to his trust and oath of office." The communication is simply a statement that the governor objects to signing the bill because to do so would countenance the methods that have been practised to secure its

passage. And in a subsequent communication to the senate on the first of November, returning without his signature a bill entitled "An act to authorize the lease of the Northern Railroad," the governor said that the substance of it was an important part of the bill returned to the house on October 18 without the executive signature, "by reason of corrupt methods and attempted bribery in promoting its passage."

N.H. Senate Journal, 1887, p. 483.

It clearly appears, therefore, by the communication itself, that the governor did not examine the bill, and he does not, in the communication, express any opinion upon it; *i.e.*, his communication does not state objections *to the bill itself*, but only objections to the conduct of persons not members of the legislature, and whose conduct did not improperly affect any member of the legislature with reference to the passage of the bill. In short, the communication is only a statement, —

First. That the governor has not examined the merits of the bill.

Second. That he expresses no opinion of the bill itself.

Third. That he is of the opinion that no member of the legislature has been improperly influenced with reference to the passage of the bill.

Fourth. That he is of the opinion that "deliberate and systematic attempts" have been made to improperly influence the members of the legislature with reference to the passage of the bill, and therefore, for the purpose of condemning such ineffectual attempts to improperly influence the legislature, he refuses "to enter upon the intrinsic merits of the measure to express any opinion upon them;" *i.e.*, *refuses to examine and express any opinion upon the bill itself.*

The whole effect of the communication of the governor with

reference to this bill, depends upon article 44 of the constitution. If it was not such action as that article requires, it was of no effect, and the bill became a law. What did that section require the governor to do to prevent this bill from becoming a law?

What is the nature of the power given to the governor by this provision of the constitution? Is it a power to prevent a bill duly enacted by both branches of the legislature from becoming a law, by returning it *without examination of it, and with no objection to its provisions*, or only a power to revise the provisions of the bill and prevent it from becoming a law, by a statement of objections to its provisions, unless the legislature, upon reconsideration of the bill in the light of such objections, shall again pass it by a vote of two thirds of each house? *Is it a power to revise and negative bills passed by the legislature, or a power to negative them without revision?* Does it require an expression of opinion as to the merits of the bill, in the form of objections returned with the bill to the house in which it originated, to prevent its passage, or is the duty which it imposes upon the governor fulfilled by returning the bill without examination, with no expression of opinion as to its merits or demerits, but simply with objection to signing it without reference to its provisions?

The defendant's claim is that an examination of the bill and a statement of objections to its provisions is essential to an exercise of the qualified negative of the governor upon the action of the legislature, and that as this communication of the governor stated that he had not examined the bill, and that he expressed no opinion upon the merits of it, and stated no objections to its provisions, *it was not an exercise of the qualified negative power of the governor under the constitution, and therefore the bill became a law.*

It is true that the governor says, "It is with great regret that I feel called upon to exercise the power given to the executive by the constitution, and withhold my approval from a measure which has passed both branches of the legislature by decided majorities after a thorough and able discussion covering a period of nearly four months and prolonging the session far beyond the usual limits, at great expense to the state." And if he said nothing more, we should be obliged to assume that he withheld his approval from the measure because upon examination of it he did not approve it; but he says in the next sentence, "*Without entering upon the intrinsic merits of the measure to express any opinion upon a question of such vital importance to the state*, upon which the people may wish to be heard, I am moved to object to this bill for the reason that corrupt methods have been extensively used for the purpose of promoting its passage." Taken as a whole, this is a declaration that he will not enter upon the intrinsic merits of the measure, that is, will not examine it, and that he will not express any opinion upon it, *i.e.*, *will not approve or disapprove it*, but that he objects to it for reasons wholly outside of the provisions of the bill itself. But the constitution does not say the governor may *object* to a bill simply. A person may object to that of which he knows nothing and of which he refuses to know anything. Objection does not presuppose examination or knowledge, but approval or disapproval does, and the constitution says that the governor must approve or disapprove. The vital, operative word of the provision is "*approve*," which necessarily implies examination, consideration, revision. There can be no constitutional approval or disapproval without examination of the bill approved or disapproved. The duty and power of the executive under this provision of the constitution are plain. His constitutional

action under it is limited to two things: *First, to the approval or disapproval of the bill or resolve presented to him; second, to the expression of the result of his approval or disapproval by signing the bill if he approves it, or by returning it with objections if he disapproves it.* He has no constitutional right to sign it or to return it unless he approves it or disapproves it, and for him to refuse to approve or disapprove is to refuse to perform the primary duty imposed upon him and to render it impossible for him to exercise the qualified negative power by returning the bill. The power to negative the bill by return of it with objections depends absolutely upon the disapproval of it, which in the nature of things requires an examination and consideration of it. *For the governor to say that he refuses to express any opinion of the bill is for him to refuse to do that upon which alone his power to return it with objections absloutely depends.*

For the governor to say, as he does in this communication, that he does not express any opinion upon the bill, is to say that he does not approve or disapprove it, *i.e.*, does not perform his constitutional duty with reference to it.

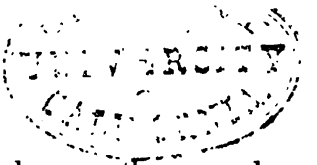
To approve is "To be pleased with; to think well of, to admit the propriety or excellence of" (Webster); "To think or judge favorably of; to commend; to express a liking to" (Worcester). How can this be predicated of that which is not examined or considered? To disapprove is "To pass unfavorable judgment upon; to condemn by an act of the judgment; to regard as wrong or inexpedient; to censure" (Webster); "To censure, to dislike, to condemn" (Worcester).

How can this be done with reference to that which is not examined or considered?

To disapprove is an act of the judgment; to object to is an act of the will. The constitution subjects the acts of the

legislature to the *judgment* of the executive, not to his *will*. It authorizes him to examine and pass judgment upon them, not to object to them without examination. If he refuses to examine and pass judgment upon an act of the legislature, he refuses to exercise the only legislative power which the constitution has conferred upon him. If he refuses to examine and express his opinion of the act itself, he refuses to do that which the constitution makes essential to the exercise of his qualified negative upon the act. The constitution authorizes the executive to *try* the completed acts of the legislature and condemn them by a negative, not to condemn and negative them *without a trial*.

The constitution says, if the governor "approve, he shall sign it; if not [that is, if he does not approve], he shall return it with his objections," &c. Here the governor does not say that he does not approve the bill, but explicitly states that he has not entered upon the intrinsic merits of the matter [bill] to express any opinion upon the subject, and then he says that he objects to its passage for reasons which have nothing to do with the merits or demerits of the bill, or even with the conduct of the legislature with reference to the bill, but relate wholly to the conduct of persons outside of the legislature, and which conduct has not had any effect upon the passage of the bill. But the power of the governor under the constitution to return a bill depends upon *whether he disapproves of it*. The constitution says, if he approves he shall sign it. *If* he does not approve he shall return it. A return without approval or disapproval of the bill is no return, and there can be no approval or disapproval without examination. For a governor to say that he has not examined a bill is for him to say that he has not performed the only legislative function which the constitution authorizes him to perform, for to refuse to examine is



to refuse to approve or disapprove, because there can be neither approval nor disapproval of a thing which is not examined. The constitution does not empower the governor to simply object to the passage of a bill. It makes it his duty to approve or disapprove, and thus renders it impossible for him to object to a bill without examining it. It does not empower him to return a bill if he objects to signing it, but only to return it if *he does not approve of it.* And in this case he states that he has not examined it and that he does not express any opinion, *i.e.*, does not approve or disapprove, which is precisely the same as though he had said, "As to this bill I refuse to exercise my revisory, qualified negative power." The true construction of the constitution is that the qualified negative of the governor can be exercised *only upon the revision of the bill.* The constitution makes it the duty of the governor first to approve or disapprove a bill, *i.e.*, to revise and examine, and his whole power to negative the bill depends upon his having examined it. If he does not examine it he cannot return it with objections. It is the plain purpose of the constitution to cause the completed acts of the legislature to pass under the revision of the executive, and to authorize him to negative them only upon such revision and a disapproval of their provisions. To say that he may return a bill without examination and with objections which do not relate to its merits, is to strike out of the constitutional provision the vital word "approve," and make it read, not "Every bill which shall have passed both houses of the general court shall, before it becomes a law, be presented to the governor; if he approve he shall sign it, but if not he shall return it," &c.; but "Every bill which shall have passed both houses of the general court shall, before it becomes a law, be presented to the governor; if he signs it it shall become a law, but if he does not sign it, it shall not be a

law unless two thirds of each house agree to pass it without his signature."

The question in this case is as to the effect of a refusal by the governor to examine a single bill. But if he can refuse to examine one bill, saying that he will not enter upon its intrinsic merits, and will not express any opinion of it, and prevent its becoming a law by the statement to the legislature of objections simply to signing it which have nothing to do with the bill itself, he can do the same with all bills. Suppose the governor should say at a session of the legislature, "I will not examine or express any opinion upon the intrinsic merits of any bill which this legislature shall pass, but I will return all of them unsigned with the objection to signing them that in my opinion the house has chosen the wrong man for speaker, or because the people have chosen a legislature which disagrees with me politically." Can it be said that such action by the governor would be an exercise of the revisionary, qualified negative power given him by the constitution? Can it be that the governor can defeat all action by the legislature, except by a two-thirds vote, *by a simple refusal to examine its completed acts, and approve or disapprove them upon their merits or demerits, and returning them unsigned with mere statements of his objections to signing them?* To say that the governor who did this ought to be impeached, does not meet the difficulty. Because, if his refusal to examine the acts of the legislature is a neglect to perform his revisionary duty under the constitution, the constitution itself furnishes the remedy by the provision that the bills become laws notwithstanding this neglect. And if a refusal to examine the acts of the legislature is not a neglect to perform this duty, and if he can negative the acts by returning them with objections simply to signing them, the character of those objections is wholly in his discretion.

The objections which the executive is required to send with a bill when he disapproves and returns it to the house in which it originated, are the *result* of his examination of the bill, — a statement of the reasons *why he disapproves it*, — and must, not only by the plain meaning of the words of the constitution, but in the nature of things, relate to the provisions of the bill disapproved. It was not sufficient for the governor to return this bill saying simply that he declined to sign it. The constitutional provision is not that if the governor approve the bill he shall sign it, but if not, he shall return it *with a refusal to sign it.* It is that if he approve the bill he shall sign it, but if not, he shall return it *with his objections.*

If the governor had returned this bill with a communication saying that he had examined it and that he declined to sign it, clearly such a communication would have had no effect. If he had returned it with a communication saying that he declined to enter upon the intrinsic merits of it, that is, declined to examine it, and therefore he did not sign it, the communication would have had no effect. If he had returned it with a communication stating that he had no time to examine it or that he was not able to examine it and express any opinion upon it, and therefore he refused to sign it, the communication would have had no effect. The language of the constitution is explicit that if the governor does not approve, he shall "return it *with his objections;*" and unless the plain meaning of it is to be frittered away, the objections must be *the result of an examination of the bill* and to the bill itself. The language is, "Every bill that shall pass both houses of the general court shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objec-

tions at large on their journal, and proceed to reconsider it." That is, stated fully, Every bill shall be presented to the governor. If he approve *the bill*, he shall sign *the bill;* but if not, he shall return *the bill*, with his objections *to the bill*, to that house in which the bill shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill.

It is suggested that this language only requires the governor to state his objections *to signing the bill*, and that any objection which he says is to him a sufficient reason *why he should not sign the bill*, although it does not relate at all to the merits or to the provisions of the bill, is a statement of objections within the meaning of this provision, and therefore the governor can negative the bill without any examination of it.

It is obvious, however, that this concedes to the governor the power under this provision to compel the general court to legislate, by a two-thirds vote of each house, without any expression of opinion on his part as to the merits of the legislation; that is to say, it gives him power, by a statement of any objection to signing the bill which he chooses to state, to compel all legislation by a two-thirds vote of both houses. To test it, suppose the governor should return a bill with a communication saying that he had not read it, but that he objected to signing it because he was unable to obtain a quill pen to sign it with; or because he received it on Friday, which he considered an unlucky day; or because the messenger who brought it to him was a colored person; or suppose he should return the bill saying that he had not examined it, but that he declined to sign it because the legislature had continued its session longer than he thought was proper, or because he was satisfied a large number of members of the legislature were of the Catholic religion,

or because he had observed that many of the members of the legislature used tobacco or intoxicating liquors. Can it be claimed that, by returning the bill with objections like these, the governor could prevent its becoming a law unless two thirds of both houses should afterwards vote for it? Would this be an exercise of his qualified negative power? And yet if the governor can prevent a bill from becoming a law by returning it with objections simply to *signing it*, and not to the bill itself, any objection which he sees fit to state is sufficient. This is not what the constitutional provision giving the governor a qualified negative upon the acts of the general court means. The purpose of that provision is to require the governor to *examine* every bill which has passed both houses of the genetal court before it becomes a law, and if he approves the bill, to require him to sign it, but if he does not approve the bill, to require him to return it, with his objections thereto, to the house in which it originated, to the end that that house may proceed to reconsider the bill in the light of the governor's objections to its provisions.

It is only by this construction of the provision, which is the natural construction of its language, that full effect can be given to all its provisions. The house to which the bill is returned is required, first, to enter the objections of the governor at large on their journal, and then to proceed to reconsider the bill, and if, after such reconsideration, two thirds of the house "agree to pass the bill," it is to be sent, together with such objections, to the other house, which is required likewise to reconsider it. For what purpose are the objections to be entered upon the journal of the house where the bill originated, and sent with the bill, if it be passed by two thirds of that house, to the other house, except that both houses may have the benefit of such objections in reconsidering the bill? To say that objections which do not relate to

the bill itself, which have nothing to do with the merits of the bill, but are only objections which the governor has to *signing* it, without reference to its merits, are to be entered upon the journals of the houses before the house proceed to reconsider the bill, is to say that something shall be done that is purely idle and unnecessary.

It is said, however, that as the governor, in his revisionary and qualified negative power upon the action of the legislature, exercises power which is in its nature legislative, therefore any objection which a legislator could make to proposed legislative action may be made by the governor against the legislative action of the two houses of the legislature; and if this be so, there is obviously no objection of any possible description which the governor cannot interpose to the legislative action of the two houses, and he may, as I have said, compel them to legislate by a two-thirds vote, by the arbitrary statement of objections which have nothing whatever to do with their action, and cannot in the nature of things affect the reconsideration of the bill in the slightest degree. But the constitution has wisely limited the right of the executive to participate in legislation *to the doing of one thing only*, and that is to *revising and re-examining* the acts of the legislature and approving them by signing them, or disapproving them by a statement of objections to them to be returned to the legislature to aid it in reconsideration.

It has not given him a vote upon the question whether a bill shall become a law equal to that of two thirds of the members of each branch of the legislature, and which he may cast against the bill in the form of an objection which states no reasons for it, as a member of the legislature may cast his vote.

It has only made it his duty to examine the completed acts of the legislature, and approve them by his signature, or dis-

approve them by a written statement of his objections to them.

It has given him five days within which to perform this duty, and has wisely provided that if he fails to perform it within that time, the acts of the legislature shall be laws without his approval. He cannot defeat the plain requirement of the constitution that he shall examine the acts of the legislature, and approve or disapprove them upon their intrinsic merits, by refusing to enter upon their intrinsic merits, and returning them with objections which have nothing to do with the provisions of the acts, but relate to the conduct of persons outside of the legislature, and which he says have not affected its action.

If a bill is presented to the governor within the last five days of the session (Sundays excepted), the constitution does not require him to sign it, or to return it with objections, but permits him to retain it, "in which case it shall not be a law." This is obviously because a consideration of the provisions of the bill and an expression of his opinion thereof in the form of objections to the bill, if he does not approve it, are essential to the discharge of his constitutional duty to approve the bill by signing it, or to disapprove it by returning it with objections to its provisions to the house in which it originated. In his message to the senate on the Saint Clair flats bill, February 1, 1860, President Buchanan said that "To require him [the president] to approve a bill when it is impossible he could examine into its merits, would be to deprive him of the exercise of his constitutional discretion, and would convert him into a mere register of the decrees of congress." It is equally true that to allow the president or the governor to negative the action of congress or the legislature without examining into the merits of that action, would be to give him an arbitrary check upon such action

except by a two-thirds vote, and would thus change the power of the legislature to legislate by a majority vote (except in cases where, upon examination and revision of its action, the executive states objections thereto) into a power to legislate only by a two-thirds vote *in all cases where the executive may so direct.*

It may be asked, Do you claim that the governor must sign a bill the provisions of which he approves, and against the intrinsic merits of which he can state no objections, when he knows its passage to have been procured by bribery, or by violence or fraud? To this I reply, in the first place, that that question is not raised in this case. The governor says that no member of the legislature has been untrue to his trust. His communication declares that the "measure has passed both branches of the legislature by decided majorities, after a thorough and able discussion covering a period of nearly four months," and that he is glad "to be able to say that no evidence has yet been produced to show that any member of the legislature has been unfaithful to his trust and oath of office." So far from it appearing that the passage of this bill was procured by improper means, we have the official certificate of the governor in the very message by which he objects to the bill that all attempts to improperly influence the action of the legislature in relation to it failed, and that it was the result of the deliberate and honest action of the legislature.

In the second place, I answer that the governor cannot, for the purpose of exercising his qualified negative upon the acts of the legislature, officially know that their action has been improper. He can no more inquire into the motives of the legislature in passing a bill than the judiciary can inquire into his motives in approving or disapproving it. Neither branch of the government can officially know that

the action of another branch has been actuated by improper motives. The executive cannot try the honesty of the legislature for the purpose of exercising his constitutional function of revising its completed action, any more than the judiciary can try the honesty of the legislature and of the executive for the purpose of ascertaining whether its completed acts are laws. Each branch of the government must necessarily, in the nature of things, assume the honesty and good conduct of the other. When a bill has duly passed both houses of the general court, and is presented to the governor properly authenticated by the signatures of the speaker of the house and of the president of the senate, the governor can no more go behind the bill itself and inquire into the motives of the house or the senate in passing it than the judiciary, when the bill is signed by the governor, can go behind his signature and that of the president of the senate and the speaker of the house, and try the question of the motives of the governor in approving it, or the motives of either branch of the general court in passing it.

Counsel for the plaintiffs say, "Suppose that the friends of a bill forcibly prevent five senators from entering the state house, and that during the enforced absence of these senators the bill passes the upper branch by a majority of one; or suppose that the bill passes the house by a majority of one; that on the very next day fifty members are indicted for receiving bribes to vote in favor of the bill, and that they all plead guilty, and are sentenced and committed to the state prison before the bill reaches the governor, may not the governor, on account ot these facts, refuse to sign the bill?" The illustration is more striking than sound. It might as well be put with reference to the duty of the judiciary to enforce a law which has been duly passed by the general court and approved by the executive, or become

a law by the failure of the executive to approve or disapprove it.

Must the judiciary enforce a law the passage of which was procured by violence, and the approval of which was obtained by bribery? It may seem at first sight that it ought not to do so; but it is well settled that the judiciary must enforce the law without reference to these facts, for, unless the completed acts of each branch of the government are to be taken as finalities by the other branches, neither is independent of the other and there is no real constitutional government. The independence of the three branches is the primary principle of our constitutional government, and it necessarily requires that each branch, in the exercise of its powers, shall assume the good conduct of the other branches. The only exception to this is the constitutional provision for impeachment trials, in which the official impeached can be condemned only after a hearing and trial.

Suppose the governor seasonably returns a bill with objections to its provisions to the house in which it originated, and before that house reach a reconsideration of the bill it is known beyond question that the governor was bribed to return the bill; is it any less the duty of that house to reconsider the bill, and does it thereby become a law without a two-thirds vote of each house notwithstanding the objections? Or even suppose before the house reaches the reconsideration of the bill the governor has been impeached and removed from office for accepting a bribe to return the bill with objections, does the bill thereby become a law, notwithstanding its return, without further action by either house? If so, then, as in this state the house can impeach, and the senate can condemn and remove the governor by a majority vote, the constitutional provision for revision of the

acts of the general court by the executive can be thereby wholly nullified.

It is not, as the learned counsel for the plaintiff seem to apprehend, a question of the *separation* of the powers of government between the three branches, but of the *independence of each branch in the exercise of its powers.* This independence of the three branches is at the foundation of the scheme of government established by the constitution, and necessarily requires each branch to accept the acts of the others as finalities without any inquiry into their conduct or motives in relation to them.

The fact that in the revision of the acts of the general court the executive exercises legislative power, does not change the case, for it is not a question of what kind of power either branch exercises, but of whether, in the exercise of that power, it must treat the acts of the other branches as final, or can go behind them and pass judgment upon the conduct and motives of the other branches in relation to them.

While the governor exercises legislative power in the approval or disapproval of the acts of the legislature, he exercises it only in the manner and to the extent specifically pointed out by the constitution, and as *an independent branch of the government with reference to the completed acts of another independent branch.* Legislative power may be said to be inherent in the legislature, so that the mere establishment of a legislative branch of the government clothes it with power to legislate, but such power is not inherent in the executive branch of the government, and the establishment of an executive branch, so far from clothing it with legislative power, necessarily excludes such power. Whatever legislative power the governor has, therefore, must be found within the fair meaning of the words of the constitu-

tion authorizing him to approve or disapprove the acts of the legislature; and to administer that provision with any regard to the independence of the legislature, the governor must deal with the acts which come to him from the two branches of the legislature, without reference to the motives of the legislature in passing them. An ample answer to all suggestions such as are made by the counsel for the plaintiffs with reference to the power of the governor to refuse to approve acts of the legislature without reference to their merits because the legislature were actuated by improper motives in passing them, is that *it is not so written.* The constitution has not clothed the governor with power to try the conduct of the legislature or of either branch of it. It has simply given him power to try the completed acts of the legislature when they reach him in the form of bills which have duly passed both branches and are properly authenticated to him as such. It has directed to him to examine and approve or disapprove *the bills*, not to go behind the bills and approve or disapprove the *conduct or motive of the legislature in passing them.*

Once concede the power of the governor in the exercise of his function of approving or disapproving bills which have passed both branches of the legislature to refuse to examine the bills upon their merits and to go behind the bills themselves and examine into and try the conduct of either branch of the legislature with reference to their passage, and there is no limit to such inquiry. He may try not only the honesty of the conduct of the members of the legislature, but the propriety of their conduct. He may say, I will not sign this bill because the debate in the legislature has not been decorous, or because the legislature have held night sessions, or because debate was unduly restricted upon the bill in one branch or the other, or because the speaker of the house or

the president of the senate ruled improperly with reference to some question raised upon the consideration of the bill, or because the house or the senate suspended its rules and passed the bill without proper consideration.

If the constitution gives the governor the power to do this, it is his duty to exercise that power and examine into the propriety or honesty of the conduct of the legislature or of any of its members whenever any question is raised with regard to it. And he is thus made not a revisor of the bills enacted by the legislature, but a supervisor of its conduct and its morals; and the power of the legislature to legislate by a majority vote of each house is made to depend not upon the character of the bills it passes or upon the governor's opinion of the merits of those bills, but upon his opinion of the propriety of its conduct and the rectitude of its motives.

The framers of the constitution wisely refrained from giving to the governor any such power, and thereby imposing upon him any such duty. They authorized him to deal only with the completed acts of the legislature in a particular manner, and gave to each house ample power to deal with the misconduct of its members or of other persons affecting its deliberations and conduct. The learned counsel for the plaintiff say, "Suppose the members of the legislature exceeding in number the majority who voted for a bill have all been indicted for taking bribes for voting for the bill, have pleaded guilty and have been sentenced and committed to state prison before the bill reaches the governor?" Do they know of any statute under which a member of the legislature can be indicted, convicted, and sent to prison by the court for misconduct in his office as a member of the legislature? Suppose such an indictment to be found and the question of the conduct of the legislator submitted to the decision of a jury. Obviously that question can be and ought to be tried

by the house of which he is a member. Suppose the jury and that house come to different conclusions. Can the member be imprisoned and prevented from representing his constituency because the jury have found him to be guilty of misconduct as such member, while the house of which he is a member have found that he has not been guilty of such misconduct?

Or if the jury find him not guilty, is the house of which he is a member thereby prevented from trying and expelling him if it finds he is guilty?

The governor seems to have feared that his approval of this bill would be an approval of what he believed to be the improper conduct of those who promoted its passage; and therefore, obviously because he believed that the character of a bill which, as he said, had "passed both branches of the legislature by decided majorities, after a thorough and able discussion covering a period of nearly four months," would, without doubt, prove upon examination to be such that he could not disapprove it upon its merits, in order to show his disapproval of the conduct of those who had promoted its passage, he refused to perform his constitutional duty of examining the bill.

Having the bill duly authenticated and presented to him as a completed act of the legislature as an independent branch of the government, he deliberately disregarded the plain mandate of the constitution to him to examine and approve or disapprove the bill, and entered upon an *ex parte* trial of the conduct and motives of the legislature and of those who had appeared before it in relation to the passage of the bill. Fortunately for the legislature, it was acquitted by his excellency; but he convicted those who had appeared before it, and, to punish them for the misconduct of which he thus found them guilty without

notice and without hearing, he refused to express an opinion upon the merits of the bill, and attempted to prevent its becoming a law by wholly refusing to perform his constitutional duty of examining and approving or disapproving it. It must, of course, be assumed that the motives of the governor were pure and good; but if he believed that an approval of the bill would be an approval of the conduct of the legislature or of those who promoted the passage of the bill by it, he was clearly wrong. It was the *completed act of the legislature*, as shown by the bill duly authenticated and presented to him, which he was authorized and required to approve or disapprove, not the methods by which it became a completed act. The governor's approval of a bill is no more an expression of his opinion of the conduct of the legislature with reference to its passage, no more an approval or disapproval of the conduct of those who promote its passage, than the administration of a law by the judiciary is an expression of their opinion of the conduct of the legislature in passing it, or of the governor in approving it.

The governor's communication states that he deems it his plain duty to rebuke the misconduct of which he has found the promoters of the bill to have been guilty, and therefore he says, "Without entering upon its merits, I VETO THE BILL."

The motive of his excellency must be assumed to have been good, his purpose high and moral; but where in the constitution is he authorized to *rebuke* the conduct of suitors before the general court? Where in the constitution or the law of New Hampshire is the good name of those who appear before the general court committed to the arbitrary decision of the executive to be tried and condemned unheard? What right under the constitution has the governor to perform his high constitutional duty of revising the acts

of the legislature without reference to the merits of those acts, and for the purpose, not of assisting the legislature to make good laws, but of rebuking the conduct of those who have appeared before it?

Does the constitution authorize the governor to deprive the people of the benefit of a good law the provisions of which he does not disapprove, unless two thirds of each house vote for it, merely to enable him to rebuke the conduct of those who promoted its passage, because such conduct does not conform to his moral standard?

The constitution authorizes and requires the governor to examine the acts of the legislature and advise it of any objections to them which, upon such examination, he finds to exist; but it nowhere empowers him to veto or *forbid* such acts even for the purpose of rebuking conduct which does not meet his approval. His duty is to assist the legislature by an examination of its acts and pointing out any objections to them, not to *forbid* its acts without reference to their merits.*

It is true the power given to the executive by this provision is purely legislative, and if he exercises it only in the manner and to the extent to which he is authorized to exercise it, the independence of the legislative and executive powers, as defined by the constitution, is not thereby interfered with, for the fundamental rule stated by article 37, part 1, of the constitution, that "the legislative, executive, and judicial powers of the government ought to be kept as separate and independent of each other as the nature of a free government will admit," is to be construed in subordination to the express

* "It is really an abuse of language to term the refusal of the President to approve a bill 'a veto.' The word is not in the constitution. It is borrowed from a state of affairs essentially different, and does not harmonize with the constitutional notion of the president's co-operation in legislation. The president has no right to forbid congress to do anything. He can only say that he does not agree, and declare his reasons therefor." (Von Holst's Const. Law, sec. 33.)

provisions of the constitution itself. To the extent that the constitution confers legislative power upon the executive, it is as much his duty to exercise it as it is the duty of the legislature to exercise the legislative power confided to it by the constitution, and the exercise of the legislative power conferred upon the governor by the constitution *to that extent* does not in the slightest degree interfere with the fundamental rule of the constitution that the legislative, executive, and judicial powers of the government ought to be separate and independent. But when we come to consider *to what extent the constitution has conferred legislative power upon the executive*, we are bound to construe the language giving that power in such a way as not to interfere with the operation of this fundamental rule, that the legislative and executive powers are to be kept separate and independent. And if we find two constructions of the language giving that power to the executive possible, one a construction which subjects the completed acts of the legislature to an arbitrary negative without examination and without reasons based upon the merits or demerits of such acts, and which practically empowers the executive branch of the government to arbitrarily compel the legislative branch to act in all cases by a two-thirds vote; and another construction which subjects the completed acts of the legislative branch only to the revision and re-examination of the executive, and empowers him to compel the legislature to pass such acts as he may negative upon examination, only with the aid of objections by him to the provisions thereof, so that the executive acts as the adviser of the legislature and not as its dictator, — it is our duty to adopt the construction which least interferes with the independence of the legislative branch, and hold that the provision conferring legislative power upon the executive only authorizes him to state objections to the provisions of

legislative acts which he revises, and not that which authorizes him to negative them without revision by objections which have nothing to do with their merits.

Even if it were doubtful whether the language of the constitution authorizes the executive to negative a bill by returning it without an examination of it, the contemporaneous and subsequent practical construction of this provision, from its adoption down to the present time, shows conclusively that an examination of the bill and a statement of objections to it, which are the result of such examination, is essential to the exercise of the qualified negative power.

"Great weight has always been attached, and very rightly attached, to contemporaneous exposition."

MARSHALL, C.J., in *Cohens* v. *Virginia*, 6 Wheat. 418.

"The contemporaries of the constitution have claims to our deference upon the question, because they had the best opportunities of informing themselves of the understanding of the framers of the constitution and of the sense put upon it by the people when it was adopted by them."

Ogden v. *Saunders*, 12 Wheat. 290.

Upon this ground alone the Supreme Court of the United States sustained the right of its members to sit as circuit judges.

Stuart v. *Laird*, 1 Cranch, 299.

So also the same Court, in holding that the appellate power of the United States extends to cases pending in the state courts, said, —

"Strong as this conclusion stands upon the general language of the constitution, it may still derive support from other sources. It is an historical fact that this exposition of the constitution,

extending its appellate power to state courts, was, previous to its adoption, uniformly and publicly avowed by its friends, and admitted by its enemies, as the basis of their respective reasonings both in and out of the state conventions. It is an historical fact that, at the time when the judiciary act was submitted to the deliberations of the first congress, composed as it was not only of men of great learning and ability, but of men who had acted a principal part in framing, supporting, or opposing that constitution, the same exposition was explicitly declared and admitted by the friends and by the opponents of that system."

Martin v. *Hunter's Lessee*, 1 Wheat. 351.

It is therefore proper to show that it is an historical fact that the constitutional provision giving a qualified negative upon the acts of the legislature was, before its adoption, held to give simply a power of revision and not of objection, and that in its exercise by those who were contemporary with its adoption and knew the views of those who framed it, and by all who have exercised it since, it has uniformly been treated as requiring an examination of the legislative acts and an expression of the opinion of the executive as to their provisions.

The history of this constitutional provision and of the views of those who framed and adopted it, shows conclusively that it was intended to give the executive power to revise the acts of the legislature and negative them only by the statement of objections to their provisions, and that a consideration of the provisions of the bill is essential to its exercise.

The qualified negative of the executive upon acts of the legislature, commonly called the "veto power," as it exists in the Constitution of New Hampshire and in most of the other states of the Union and in the Constitution of the United

States, is peculiar to those constitutions, and exists nowhere else. It is not an arbitrary power to negative the action of the legislative branch of the government without giving reasons, — like the power of the English sovereign to negative acts of parliament,*— but only a power to negative the action of the legislature upon reasons stated to it in a particular manner; that is to say, by objections to its action, rendered to that branch of the legislature in which such action originated, to be entered upon the records of that branch to aid it in the reconsideration of its action, which, upon receiving such objections, it is its duty to reconsider.

It first appears as the third article of the original Constitution of the State of New York, known as the constitution of 1777, which was framed and adopted April 20, 1777, by "The Provincial Congress" which assembled July 10, 1776. It was introduced into the congress by Robert R. Livingston, and the original draft in his handwriting is still in existence among the miscellaneous papers in the secretary of state's office. It was not amended, but, after some debate, the nature of which is not shown by the journal of the congress, was adopted as presented by a vote of thirty-one to four.

Journal of Provincial Congress, N.Y., vol. I. pp. 860–862.

*"When a bill has passed through both houses the royal assent is given either by her majesty in person or by commission. When her majesty gives her consent in person, her concurrence is previously communicated to the clerk-assistant, who reads the titles of the bills, on which the royal assent is signified by a gentle inclination. If it be a bill of supply, the clerk pronounces loudly, 'La reigne remercre ses bons sujets, accepte leur bénévolence, et ainsi le veult,'—'The Queen thanks her good subjects, accepts their benevolence, and answers, Be it so.' To other public bills the form of assent is 'La reigne le veult,'—'The Queen wills it so.' To private bills, 'Soi fait comme il est désiré,'—'Be it as it is prayed.' When the royal assent is refused, the clerk says, 'La reigne s'avisera,'—'The Queen will consider of it;' but these words are never now pronounced, and have not been heard since Queen Anne refused to sanction the Scotch Militia bill in the year 1707." (The Crown, the Senate, and the Bench, p. 54.)

It was as follows: —

"III. And whereas laws inconsistent with the spirit of this constitution or with the public good may be hastily or unadvisedly passed: Be it ordained that the governor, for the time being the chancellor, and the judges of the Supreme Court, or any two of them, together with the governor, shall be and hereby are constituted a council to revise all bills about to be passed into laws by the legislature, and for that purpose shall assemble themselves from time to time when the legislature shall be convened, for which, nevertheless, they shall not receive any salary or consideration under any pretence whatever. And that all bills which have passed the senate or assembly shall before they become laws be presented to the said council for *their revisal and consideration;** and if upon such revision and consideration it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto, in writing, to the senate or house of assembly (in whichsoever the same shall have originated), who shall enter the objections sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if after such consideration two thirds of the said senate or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall be law.

"And in order to prevent any unnecessary delays, be it further ordained that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall by their adjournment render a return of the said bill within ten days impracticable, in which case the bill shall be returned on the first day of the meeting of the legislature after the expiration of the ten days."

New York Constitution, 1777, Article 3.

It next appears in the constitution adopted by a convention of the people of Vermont, July 8, 1777, which vested

*The italics are mine.

the legislative power in a house of representatives, and the executive power in a governor and council, and provided for the revision of acts of the legislature as follows: —

"To the end that laws before they are enacted may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of public nature shall be first laid before the governor and council for their *perusal and proposals of amendment*,* and shall be printed for the consideration of the people before they are read in general assembly for the last time of debate and amendment; except temporary acts which after being laid before the governor and council, may (in case of sudden necessity) be passed into laws; and no other shall be passed into laws until the next session of assembly. And for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed and set forth in their preambles."

Section 14, Vermont Const. 1777.

In the Pennsylvania Constitution adopted September 28, 1776, the following provision was inserted to guard against hasty legislation: —

"To the end that laws before they are enacted may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all bills of public nature shall be printed for the consideration of the people before they are read in general assembly the last time for debate and amendment; and, except on occasions of sudden necessity, shall not be passed into laws until the next session of assembly; and for the more perfect satisfaction of the public, the reasons and motives for making such laws shall be fully and clearly expressed in the preambles."

Section 15, Penn. Const. 1776.

It next appears as article two, chapter one, of the original Constitution of Massachusetts, adopted March 2, 1780. By

*The italics are mine.

this article the power of revision was given to the governor, but in other respects the provision is plainly copied, not only in its idea but largely in its language, from the provision of the New York Constitution. This article was as follows: —

"No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor *for his revisal;* and if he, *upon such revision,** approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve; but if, after such reconsideration, two thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve shall be entered upon the public records of the commonwealth.

"And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law." †

Mass. Constitution 1780, ch. 1, art. 2.

The constitution adopted by the Massachusetts General Court in 1778, and which was rejected by the people, contained no provision for any revision of the acts of the legislature before they became laws, and the provision for such revision in the constitution of 1780 was evidently suggested

*The italics are mine.

† Amended in 1820 by a provision that, if the legislature prevent the return by adjournment within the five days, the bill or resolve shall not have the force of law.

by the provision for a council of revision in the New York Constitution.

When the Massachusetts Constitution of 1780 was adopted, the New York council of revision had existed for nearly three years, and had returned ten bills to the legislature with carefully prepared objections and arguments against their provisions.

Street's New York Council of Revision, pp. 201–229.

Mr. Hamilton, speaking of the council of revision about this time, said, "Its utility has become so apparent that persons who in compiling the constitution were violent opposers of it, have from experience become its declared admirers."

The usefulness of the revisionary power had been shown by experience in New York, and the constitutional convention of the adjacent State of Massachusetts naturally adopted it without much debate as to the propriety of it. But the proceedings of the convention, and its address submitting the constitution framed by it, to the people, show clearly that the members of the convention did not understand that the negative power given to the governor by the constitution was one to be exercised without reference to the merits of the bills negatived. It was first proposed that "the governor of this commonwealth have a negative upon all laws except those which shall be passed and made for the military defence of the state, and that he have a revision upon those," &c.

Journal of Mass. Const. Convention, 1780, p. 132.

This provision for an absolute negative, except as to laws for military defence, was rejected, and power of revision was granted in the following language; viz., —

"No bill or resolve of the senate or house of representatives shall

become a law and have force until it shall have been laid before the governor for his revisal; and if he, upon such revision, . . . shall have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing," and as given on page 91.

Ibid. p. 133.

The purpose of vesting this power in the governor was stated in the address of the convention submitting the constitution to the people, as follows: —

"The power of *revising and stating objections* to any bill or resolve that shall be passed by the two houses, we are of opinion ought to be lodged in the hands of some *one* person, not only to preserve the laws from being unsystematical and inaccurate, but that a due balance may be preserved in the three capital powers of government. . . . We have therefore thought the governor the only proper person that could be trusted with the power of *revising the bills and resolves* of the general assembly." *

Ibid. pp. 218, 219.

May 25, 1787, the Convention met to frame a United States Constitution.

At that time eleven of the states had adopted constitutions in the following order of time; viz., —

New Hampshire, January 5, 1776.
South Carolina, March 26, 1776.
Virginia, June 29, 1776.
New Jersey, July 2, 1776.
Delaware, September 21, 1776.
Pennsylvania, September 28, 1776.
Maryland, November 11, 1776.
North Carolina, December 18, 1776.
Georgia, February 5, 1777.

* The italics are mine.

New York, April 20, 1777.
Vermont, July 8, 1777.
Massachusetts, March 2, 1780.

The Constitution of South Carolina vested the legislative authority in the "president and commander-in-chief" (chosen by joint ballot of the general assembly and the legislative council), the general assembly, and the legislative council, with a provision that bills which had passed the assembly and the council might be assented to or rejected by the president and commander-in-chief.

Of the other ten states which had adopted constitutions at that time, only Massachusetts and New York had provided thereby for any revision of legislative acts before they should become laws, or any qualified negative by the executive upon the legislative branch of the government.

The New York council of revision had then returned fifty-eight bills and resolves with full and particular objections and arguments against their provisions.

The governor of Massachusetts returned two resolves and one bill with careful objections to their provisions.*

* The first objection by the Governor of Massachusetts to an act of the Legislature is found in the following message of General Hancock, which I think has never been printed, but exists in the original manuscript in the office of the Secretary of State: —

"*Gentlemen of the Senate and Gentlemen of the House of Representatives:*

"Embarrass'd as I find myself to be for want of Time to Consider the important Bills that were laid before me yesterday afternoon, I however feel a Disposition to submit to take upon myself a Burden plac'd upon me by one of them which I had the greatest Claim to be excus'd from rather than the two Houses should be subjected to the inconvenience of remaining Sitting, when their wishes are so urgent to return home—I therefore will not make any Objections to the Bill intitled "An Act for repealing two Laws of this State, and for Asserting the rights of this free, Sovereign Commonwealth to expell such Aliens as may be dangerous to the Peace and good order of Government" And as the Import and Excise Act which was yesterday laid before me, to which I have objections in its present mode, does not take place 'till the 15th of June next, and consequently no Prejudice can arise by the delay of its passing 'till next Session; I am under that Circumstance now ready to Comply with the request of the Two Branches of the General Court for a recess and will direct the Secretary to proceed accordingly if the two Houses Consent to the Suspension of that Bill.

"JOHN HANCOCK.

"Boston, March 25th, 1784."

July 1775, Governor Bowdoin returned to the house a resolve appointing "a com-

This Convention adopted the provision for revision of the acts of the legislature in the Constitution of Massachusetts, and confided the power of revision to the executive alone, instead of to the executive and the judiciary. But their debates and action and the discussion of this provision by Mr. Hamilton and others before the federal constitution was adopted, show that everybody regarded the revisionary power given by the New York Constitution to the council of revision, and the power of revisal given to the governor by the Constitution of Massachusetts, and the power of stating objections to acts of congress given to the president by the Federal Constitution, as identical, and as only a power to examine and revise the action of the legislative branch of the government by the statement of objections to its provisions. The provision for granting that power first appears in the resolutions proposed by Mr. Randolph at the opening of the convention, the eighth of which was, —

"Resolved, That the executive and a convenient number of the national judiciary ought to compose a *council of revision*,* with authority to examine every act of the national legislature before it

mittee to receive, examine, and pass on all accounts that now or may be hereafter exhibited against the commonwealth," with the objection that he deemed it unconstitutional. (Mass. Res. vol. 6, p. 392.)

May, 1787, Governor Bowdoin returned "a bill reducing the salary of the governor of the commonwealth," with the objection that he apprehended the bill to be contrary to the constitution, and was therefore compelled to return it for reconsideration. (Mass. Res. vol. 7, p. 291.)

March, 1788, Gov. Hancock returned a resolve for payment of a sum of money to Captain Benjamin Heywood, with the objection that Capt. Heywood had been paid for the same services in pursuance of a previous resolve. (Mass. Res. vol. 7, p. 465.)

The qualified negative has since been exercised by the governors of Massachusetts as follows: Twice in 1827, once in 1830, once in 1831, twice in 1833, once in 1837, once in 1840, twice in 1851, three times in 1852, three times in 1855, once in 1856, five times in 1857, once in 1859, four times in 1860, four times in 1861, twice in 1862, three times in 1864, three times in 1865, twice in 1867, five times in 1868, twice in 1870, twice in 1871, once in 1873, three times in 1874, twice in 1876, three times in 1877, once in 1879, once in 1881, once in 1882, eleven times in 1883, three times in 1884, twice in 1886, twice in 1887, once in 1888.

*The italics are mine.

shall operate, and every act of a particular legislature * before a negative thereon shall be final; and that a dissent of the said council shall amount to a rejection, unless the act of the national legislature be again passed, or that of a particular legislature be again negatived by of the members of each branch."

Madison's Debates, vol. 5 (Eliot's) p. 126.

Chief Justice Yates, who had been a member of the council of revision of the State of New York from its creation, was a delegate to the convention, and his colleagues were John Lansing, Jr. (afterwards chief justice and chancellor, and, as such, a member of the council of revision) and Alexander Hamilton.

The report by Chief Justice Yates of the discussion and action upon this resolution is quite interesting as bearing upon the views of the convention with reference to the character of the power proposed to be given to the executive. It is as follows: —

"On the 4th of June, in committee of the whole, —

"Mr. Gerry, of Massachusetts, objects to the clause, moves its postponement in order to let in a motion '*that the right of revision should be in the executive only.*'

"Mr. Wilson, of Pennsylvania, 'contends that the executive and judicial ought to have a joint and full negative; they cannot otherwise preserve their importance against the legislature.'

"Mr. King, of Massachusetts, was against the interference of the judicial. They may be biased in the interpretation. He is therefore to give the executive a complete *negative.*

"Carried, to be postponed, six states against four. New York for it.

*The mention of "every act of a particular legislature" in this resolution referred to the provision of Mr. Randolph's sixth resolution, which was that congress should have power to negative laws passed by the several states which in its opinion were contrary to the national constitution, or any treaty under the authority thereof.

"The next question [was] that the executive have a complete negative, and it was therefore voted to expunge the remaining part of the clause. Dr. Franklin against the motion. The power dangerous, and would be abused so as to get money for passing bills.

"Mr. Madison against it, because of the difficulty of an executive venturing on the exercise of this negative, and is therefore of the opinion *that the revisional authority is better.*

"Mr. Bedford, of Delaware, is against the whole, either negative or revisional. The two branches are sufficient checks on each other. No danger of subverting the executive, because his powers may by the convention be so well defined that the legislature cannot overleap the bounds.

"Mr. Mason, of Virginia, against the negative power in the executive, because it will not agree with the genius of the people.

"On this the question was put and decided *nem. con.* against expunging part of the clause so as to establish a complete negative.

"Mr. Butler, of South Carolina, that all acts passed by the legislature be suspended for the space of days by the executive.

"Unanimously in the negative.

"It was resolved and agreed that the blank [in Mr. Randolph's resolution] be filled up with the words 'two thirds of the legislature.' Agreed to.

"The question was then put upon the clause as amended and filled up. Carried. Eight states for, two against. New York for it.

"Mr. Wilson then moved for the addition *of a convenient number of the national judicial* to the executive as a council of revision. Ordered to be taken into consideration tomorrow."

On the 6th of June, "Mr. Wilson, of Pennsylvania, moved [in consequence of a vote to reconsider the question of *the revisional powers vested in the executive*] that there be added these words: 'with a convenient number of the national judicial.'

"Upon debate, carried in the negative. Three states for and three against. New York for the addition."

Secret Proceedings and Debates of the Convention of 1787, by Robert Yates.

Mr. Pinckney submitted a plan of a federal constitution at the same time in which the provision with reference to the revisionary power was, that —

"Every bill which shall have passed the legislature shall be presented to the President of the United States *for his revision;* * if he approves it he shall sign it, but if he does not approve it he shall return it with his objections to the house it originated in, which house, if two thirds of the members present, notwithstanding the president's objections, agree to pass it, shall send it to the other house, with the president's objections, where, if two thirds of the members present also agree to pass it, the same shall become a law; and all bills sent to the president, and not returned by him within days shall be laws, unless the legislature by their adjournment prevent their return, in which case they shall not be laws."

Ibid, p. 130.

In the debate upon the resolution presented by Mr. Randolph with reference to revising the acts of the national legislature, the discussion was between those who advocated an absolute negative power in the executive and those who favored a revisionary power only.

Ibid, pp. 155, 164.

* The italics are mine.

Mr. Madison, in supporting the motion to join a convenient number of the national judiciary with the executive in the exercise of this power, speaks of it constantly as a "revisionary function," a "revisionary power." Mr. Pinckney, Mr. Wilson, and all the others who discussed the question, spoke of it uniformly as a revisionary power, a power to revise, and never as a power to negative simply.

Ibid. pp. 155, 164, 165.

Subsequently the committee of the whole reported to the convention a plan for the constitution, the tenth resolution of which was, —

"That the national executive shall have the right to negative any legislative act which shall not afterwards be passed by two thirds of each branch of the national legislature."

Ibid. p. 190.

Five days after this Mr. Hamilton, who had taken no part in the debates, presented a sketch of the essential features of such a constitution as he thought should be adopted. The provision with reference to the veto power was, —

"The functions of the executive to be as follows: To have a negative on all laws about to be passed, and the execution," &c.

Ibid. p. 205.

The tenth resolution of the plan reported from the committee of the whole, to wit, that the national executive shall have the right to negative any legislative act which shall not be afterwards passed by two thirds of each branch of the national legislature, was adopted by the convention on the 18th of July without debate.

Ibid. p. 328.

On the 21st of July an amendment was moved by Mr. Wilson to the resolution "that the supreme national judiciary should be associated with the executive in the revisionary power." In support of this Mr. Wilson said, "Let the judges have a share in the revisionary power, and they will have an opportunity of taking notice of the characteristics of a law, and of counteracting by the weight of their opinions the improper views of the legislature."

Mr. Madison argued that "to join the judiciary would be useful to the executive by inspiring additional confidence and firmness in exerting the revisionary power." It would be useful to the legislature by the valuable assistance it would give in preserving consistency, conciseness, and perspicuity and technical propriety in the laws.

Mr. Mason, Mr. Gerry, Mr. Gouveneur Morris, and Mr. Luther Martin, all spoke of the power proposed to be given by this provision of the constitution as a "revisionary power," a "revisionary check," "the action of the judiciary and executive branches in the revision of the laws." It was objected to the plan of joining the judges with the executive that it was contrary to the fundamental principle which had been approved by the convention that the three departments of the government should be kept distinct; to which it was replied that, if such a judiciary check on the laws was inconsistent with this theory, "it was equally so to admit the executive to any participation in the making of laws, and the revisionary plan ought to be discarded altogether."

After this discussion, the whole tenor of which shows that the power contemplated to be given to the executive or to the executive and the judiciary, was a power to revise and not a power to negative without examination, the tenth resolution was adopted in the form proposed; that is, that the executive should have the right to negative any legislative

act not afterwards passed by two thirds of each branch of the legislature.

July 26 the convention referred its proceedings to a committee of detail, and adjourned till August 6, that the committee might have time to prepare and report the constitution.

The thirteenth resolution of the draft, as referred, was in these words:

"Resolved, That the national executive shall have a right to negative any legislative act; which shall not be afterwards passed, unless by two third parts of each branch of the national legislature."

Ibid. p. 376.

In the draft of the report of the committee on the 6th of August, the provision as to the revisionary power of the executive was contained in section 13 of article 6 of the draft in these words:

"Every bill which shall have passed the house of representatives and the senate shall, before it becomes a law, be presented to the President of the United States *for his revision*. If, upon such *revision*, he approve of it, he shall signify his approbation by signing it. But if, upon such *revision*, it shall appear to him improper for being passed into a law, he shall return it, together with his objections against it, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill. But if, after such reconsideration, two thirds of that house shall, notwithstanding the objections of the president, agree to pass it, it shall, together with his objections, be sent to the other house, by which it shall likewise be reconsidered, and, if approved by two thirds of the other house also, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within seven days after it shall have

been presented to him, it shall be a law, unless the legislature, by their adjournment, prevent its return, in which case it shall not be a law." *

Ibid. p. 376.

On the 15th of August, Mr. Madison moved the following amendment of this article: —

"Every bill which shall have passed the two houses shall, before it becomes a law, be severally presented to the President of the United States and to the judges of the Supreme Court, *for the revision of each.* If, upon such *revision*, they shall approve of it, they shall respectively signify their approbation by signing it; but if, *upon such revision*, it shall appear improper to either, or both, to be passed into a law, it shall be returned, with the objections against it, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider the bill; but if, after such reconsideration, two thirds of that house, when either the president or a majority of the judges shall object, or three fourths, where both shall object, shall agree to pass it, it shall, together with the objections, be sent to the other house, by which it shall likewise be reconsidered, and if approved by two thirds or three fourths of the other house, as the case may be, it shall become a law." *

Ibid. p. 428.

In the debate upon this motion, the power given by the proposed provision was alluded to, without exception, as a "revisionary power," "a power to revise and suggest reasons against the enactment of laws hastily passed," &c. This amendment was rejected. The section was then otherwise amended so as to apply to orders, resolutions, or votes of congress, as well as to bills, and so as to require three fourths of each branch to pass an act over the objections of the president. The draft of the proposed constitution was subsequently sent to a committee on style, who reported on

* The italics are mine.

the 12th of September a digest of the plan. It was then moved to reconsider the clause requiring three fourths of each house to overrule the negative of the president, and to insert two thirds in place of three fourths. In the discussion upon this motion all the speakers still treated the power given by this section as a revisionary power, the purpose of it being, first, to defend the executive rights; second, to prevent popular and factious injustice. The amendment was agreed to, and the section adopted as it was included in the draft of the constitution, as signed by the members of the convention and afterwards adopted by the states, in the following words: —

"Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevents its return, in which case it shall not be a law."

Ibid. p. 560.

It will be observed that this provision corresponded substantially with that of the Massachusetts Constitution, except that the president has by it ten days, instead of five, in which to return a bill with objections, and that if congress cut this

time short by adjournment within the ten days, the bill does not become a law.*

The views of those who framed the United States Constitution, as to the character and extent of the power given the executive by this provision, were very clearly set forth by Mr. Hamilton while the constitution was under discussion before its adoption. He says, in discussing this clause of the constitution, —

"The qualified negative of the president *tallies exactly with the revisionary authority of the council of revision of this state* [New York], of which the governor is a constituent part. In this respect the power of the president would exceed that of the governor of New York, because the former would possess singly what the latter shares with the chancellor and judges; but it would be precisely the same with that of the governor of Massachusetts, whose constitution as to this article seems to have been the original from which the convention have copied." †

The Federalist, No. 69, Hamilton's Works, Lodge's ed., 1886, vol. IX. pp. 429, 430.

Again, in discussing more at length the nature of his power, Mr. Hamilton said, —

"The primary inducement to conferring the power in question upon the executive is to enable him to defend himself. The second one is to increase the chances in favor of the community against the passing of bad laws through haste, inadvertence, or design. *The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine*, the less must be the danger of those errors which follow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. . . . Instead of an absolute negative, it was proposed to give the executive the qualified negative already described. This is a

*This last provision was added to the Massachusetts Constitution by amendment in 1821. (See page 69.)

† The italics are mine.

power which would be much more readily exercised than the other. A man who might be afraid to defeat a law by his single veto, might not scruple to return it for reconsideration. . . . A direct and categorical negative has something in the appearance of it more harsh and more apt to irritate than the simple suggestion of *argumentative objections to be approved or disapproved by those to whom they are addressed.*" *

Federalist, No. 73, Hamilton's Works, Lodge's ed., 1886, vol. IX. pp. 458, 461.

Again, he says, —

"This qualified negative is in this state vested in a council consisting of the governor, with the chancellor and judges of the supreme court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success."

Federalist, No. 73, Hamilton's Works, Lodge's ed., vol. IX. p. 462.

In the debates of the Pennsylvania convention to ratify the constitution, the qualified negative given to the president by this provision was also spoken of as identical with the power given to the council of revision by the Constitution of New York State.

Pennsylvania and Federal Constitutions, 1787, 1788, p. 334.

In Hanson's Essay upon the Federal Constitution, published while it was under discussion, this provision of the constitution was also treated as one subjecting the bill to the *revision* of the president.

Ford's Pamphlets on Constitution, p. 225.

It may safely be said that there is not a single recorded

* The italics are mine.

expression of opinion as to the effect of this constitutional provision by those who framed the federal constitution or discussed its provisions before its adoption, which does not treat it as giving only the same power of revision which was given the New York council of revision by the constitution of that state, and which obviously could be exercised only by specific statements of objections to the provisions of the bills presented to them.

September 7, 1791, a convention met to revise the Constitution of New Hampshire.

The "form of civil government" adopted by the congress of New Hampshire January 5, 1776, had provided for a government solely by a house of representatives and a council, acting as separate branches of a legislature, and with no revision of their acts.

N.H. State Papers, vol. VIII. p. 2.

The constitution framed by the convention of June 10, 1778, and which was rejected by the people, had provided for a government solely by a council and a house of representatives, "to be styled the General Court of the State of New Hampshire, and to be invested with the supreme power of the state," with no check upon or revision of their acts.

N.H. State Papers, vol. IX. pp. 838–840.

When the second New Hampshire constitutional convention assembled in June, 1881, the New York council of revision had been in existence nearly four years, and had returned to the legislature twenty-one bills with full and precise statements of objections to their provisions. The adjoining State of Massachusetts had also adopted in its constitution a provision for similar revision of the acts of the legislature by the governor, though he had not then exercised it. Such a revision had

proved to be practicable and salutary, and the convention naturally adopted it as a part of the constitution they framed, by exactly copying the provision of the Massachusetts Constitution, except that they provided that a bill or resolve should become a law notwithstanding the objections of the governor, only by a vote of *three fourths* of the members of each house instead of a vote of two thirds, as in Massachusetts and in New York; and also that the bill or resolve should have the force of a law if not returned in *eight* days, instead of five days as in Massachusetts and ten days in New York.

N.H. State Papers, vol. IX. p. 858.

No record of the debates of this convention has been found showing why these changes from the New York and Massachusetts provisions were made, but the address of the convention submitting the constitution to the people, states the reasons why this provision for revision of the acts of the legislature was adopted. Its language upon that subject is this:

"The legislative power we have vested in the senate and house of representatives (with the reserve hereafter mentioned), each of which branches is to have a negative on the other. . . . We have given the supreme executive power the right of *revising* and objecting to all acts passed by the legislature."

Later in the same address, in referring to the qualified negative of the executive, after stating the manner of choice of the governor, his qualifications, and his liability to impeachment by the legislative branch, they said, —

"Thus controlled and checked himself, the convention thought it reasonable and necessary that he in turn should have some check on the legislative power. They therefore gave him the right of objecting to and suspending, though not the absolute control over,

the acts of that body, which they thought indispensably necessary to repel any encroachments on the executive power, and to preserve its independency."

N.H. State Papers, vol. IX. pp. 847, 850.

The provision of the constitution framed by the convention thus referred to in their address, was as follows: —

"No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor *for his revisal;* and if he shall, upon such *revision*, approve thereof, he shall signify his approbation by signing the same; but if he has any objection to the passing of such bill or resolve, he shall return the same, together with his objections *thereto*, in writing, to the senate or house of representatives, in whichsoever the same shall have originated." *

Then followed the same provisions as in the present constitution for reconsideration by the two houses.

After the sense of the inhabitants of the state had been taken upon the proposed constitution containing this provision, the convention prepared a revised plan, eighteen hundred copies of which were distributed to the towns, members of the general court, in August, 1782, and issued therewith another address to the inhabitants, in which they used the following language as to the qualified negative given by the proposed constitution to the governor: —

"We have given the supreme executive power the right of *revising* and *objecting* to all the acts passed by the legislature, for reasons hereafter to be mentioned."

And thereafter, in the address, they gave their reasons in the same language as in the first address, and the language

* The italics are mine.

giving the qualified negative was the same in the revised plan thus submitted to the people as it was in the first plan, and as is above quoted.

This constitution did not receive two thirds of the votes of the people, and was not adopted.

In August, 1782, the convention, having framed another constitution, submitted it to the people with another address.

The provision in this second constitution with reference to revision of the acts of the legislature and the language of the address in reference to it, were identical with those of the first constitution and address.

N.H. State Papers, vol. IX. pp, 877, 896.

This second constitution was not adopted by vote of the people, and in January, 1783, the convention framed a third constitution, which was submitted to the people and adopted by them by a two-thirds vote and established as the constitution of the state, October 31, 1783, and is known as the constitution of 1784.

This constitution vested the supreme legislative power in a senate and a house of representatives, each with a negative on the other, but with no revision of or check upon their acts by the executive. The executive power was given to a magistrate called the "president of the state," elected by the people, and who presided in the senate and had a vote therein "equal with that of any other member, and also a casting vote in case of a tie."

N.H. State Papers, vol. IX. pp. 903, 909, 910.

Early in the year 1783 Thomas Jefferson had prepared a

draft of a proposed constitution to be submitted to the Constitutional Convention of Virginia in 1783, in which a provision framed by him for a qualified negative upon the legislative power was as follows: —

"The governor, two councillors of state, and a judge from each of the superior courts of chancery, common law, and admiralty, shall be a council to revise all bills which shall have passed both houses of the assembly, in which council the governor, when present, shall preside. Every bill, before it becomes a law, shall be presented to this council, who shall have the right to advise its rejection, returning the bill with their advice and reasons in writing to the house in which it originated, who shall proceed to reconsider said bill. But if after such reconsideration two thirds of the house shall be of the opinion that the bill should pass finally, they shall pass and send it with the advice and written reasons of the said council of revision to the other house, wherein if two thirds also shall be of the opinion that it should pass finally, it shall thereupon become a law, otherwise it shall not. If any bill presented to the council be not within one week (exclusive of the day of presenting it) returned to them with their advice of rejection and reasons to the house in which it originated, or to the clerk of the said house in case of its adjournment over the expiration of a week, it shall be a law from the expiration of the week. The bills which they [the council] approve shall become laws from the time of such approval." *

Jefferson's Notes on Virginia, Appendix, p. 322.

When, therefore, the New Hampshire convention of 1791 assembled, a constitutional provision for the revision and qualified negative of legislative acts had been approved by Jefferson and by the federal convention of 1787, as well as by the states of New York and Massachusetts, and the provisions on that subject in the Federal Constitution and in the Massachusetts Constitution were understood to be identical

* See comments on this draft in the "Federalist," No. 49.

in their effect with the provision of the New York Constitution establishing the council of revision.

The New York council of revision had then been in existence more than thirteen years, and had returned to the legislature sixty-nine bills and resolves with full and precise objections and arguments against their provisions.

The governor of Massachusetts had possessed the power to revise the acts of the general court of that state for more than ten years, and though he had returned but one bill and two resolves under it, these had been returned with precise and careful statements of objections to their provisions.

The Constitution of the United States, with a provision giving the president power to revise the acts of congress, had been adopted about four years (New Hampshire having ratified it without objection to that provision),* and the convention naturally included such a provision in the amendments and alterations which they made to the constitution of 1784. They did this by copying in exact language the provision which in 1787 had been adopted in the federal constitution, giving the president a qualified negative upon legislation, with the exception that the time within which the bill should become a law without the signature of the governor was limited to five days (as in the original provision of the Massachusetts constitution of 1780) instead of ten days. (Sec. 44, N.H. Const. 1792.)

This provision was among the amendments which the "committee on alterations and amendments," appointed by the convention September 16, 1791, reported on February 8, 1792, and it was reported by them in its present form, *i.e.*, as a copy of the qualified negative provision of the Federal Constitution, except that, as reported, it provided that a bill

*New Hampshire ratified the Constitution of the United States June 21, 1788, being the ninth state to do so, and this ratification made up the number of states necessary to cause it to take effect by its terms.

returned by the governor might become a law by the vote of four sevenths of the house in which it originated and of a majority of the other house.

Journal N. H. Const. Convention (1791–1792), pp. 85, 88, 89.
N.H. State Papers, vol. X. pp. 38, 64.

On February 11, 1792, the convention "proceeded to consider of the report respecting the governor's power in legislation, or otherwise the negative that the governor may have on the acts of the legislature, and the report was accepted with this alteration, that on the return of a bill by the governor for reconsideration it shall require two thirds of both houses instead of four sevenths of one and a majority of the other."

Journal of Convention, p. 94.
N.H. State Papers, vol. X. p. 93.

In the Massachusetts constitution the governor was required to return the bill "with his objections thereto," but in the Federal Constitution and those copied from it, as in the New Hampshire constitution, the word "thereto" is omitted. It appears clearly, however, from the debates in the constitutional conventions and the published discussions upon the adoption of the Federal Constitution, that no other objections were contemplated but objections "thereto," *i.e.*, to the bill itself.

The word "thereto" was evidently dropped by the committee on style in the federal convention, as adding nothing to the force of the word "objections," though it is still retained in the Massachusetts Constitution.

The provision of the New York Constitution which gave the council of revision the same power to revise and negative the acts of the legislature which the Federal Constitution

was intended to give the president, was in force from 1777 to 1821, a period of forty-four years. It was administered by a council of revision of which George Clinton, John Jay, Chief Justice Morris, Chancellor Livingston, Chief Justice Yates, Chancellor Kent, Chief Justice Lansing, Chief Justice Ambrose Spencer, and other able and learned lawyers of that state were members.

Six thousand five hundred and ninety acts of the legislalature were presented to them for revision, of which they returned one hundred and sixty-nine with objections, only fifty-one of which were passed into laws notwithstanding. These objections, popularly called the vetoes of the council, were in all cases full and careful discussions of the provisions of the acts objected to by way of argument addressed to the legislature. Thirty-eight of them were written by Chancellor Kent, a larger number than by any other member of the council.

See Street's New York Council of Revision.

This provision remained in the Constitution of New York until 1821, when the power given by it to the council of revision was transferred to the governor by the adoption of a provision exactly like that of the Federal Constitution. The debate in the constitutional convention upon this change lasted several days, and was participated in by Chancellor Kent, Chief Justice Spencer, Martin Van Buren, Peter R. Livingston, Judge Platt, Mr. Duer, Mr. Tallmadge, Rufus King, Erastus Root, and other prominent members of the convention. The report of the debate covers one tenth of the entire record of the convention, and from the beginning to the end the power conferred upon the executive by this provision was spoken of as a power of revision only.

Judge Platt said (it being conceded that a qualified negative upon legislation was advisable) that the only question

was, whether it shall be retained in the council of revision, or transmitted to the governor alone.

Journal of N.Y. Const. Convention, 1821, p. 54.

Chancellor Kent spoke to the same effect, and said that as the objections to legislation stated by the council of revision under the then constitutional convention could be overcome only by a two-thirds vote of both branches, he was unwilling to vote to transfer the power of revision to the governor with a provision (which was proposed in the convention) that his objections to bills could be overcome by a majority vote of both branches upon reconsideration.

Ibid. p. 63.

General Tallmadge, chairman of the select committee who proposed the change, said that the committee "only proposed to sever the judiciary from the council of revision, retaining, however, that feature in the government," and they had adopted the language of the Constitution of the United States from the simplicity of its expression, and because the experience of the nation had given it construction, and that in recommending the abolishment of the council of revision, they had acted with the sole view of separating the departments of government.

Ibid. p. 64.

Mr. Van Buren said that the purpose of the qualified negative upon legislation was "First, to guard against hasty and improvident legislation, but more especially to protect the executive and judicial departments from legislative encroachments." Hasty and improvident legislation, he said, was partially provided against by giving each branch of the legislature a negative upon the other, but as these branches might sometimes happen to be actuated by the same feelings and

passions, it was "necessary to establish a third branch to revise the proceedings of the two." Heretofore, he said, we have had the revisory power in the hands of the judiciary and executive united. Now the people call for its separation, and "the report of the committee proposes that the power heretofore vested in the executive and judicial departments should henceforth be transferred to the executive alone." This, he said, in his judgment required that the objections of the executive upon the revision of bills should prevent the bills from becoming laws except by the same vote required to make them laws notwithstanding objections by the council of revision, that is, a two-thirds vote, and not a majority, as proposed.

Ibid. pp. 70, 76.

Rufus King said that the necessity for the change of this provision proceeded from the conviction that the judiciary should no longer be vested with any portion of the revisionary power, and that the provision proposed (that is, the one found in the Federal Constitution) simply vested in the governor "the same power which was vested in the council of revision" by the original New York Constitution.

Ibid. pp. 77, 89.

To the same effect were the remarks of Chief Justice Spencer, Mr. Root, Mr. Livingston, and other gentlemen who discussed this matter. An examination of this debate, and of the action of the convention upon this point, shows conclusively that all these gentlemen and the whole convention understood that the qualified negative upon legislation given by the Federal Constitution to the president, and by the Massachusetts Constitution to the governor, was identical with that given by the original Constitution of New York to the

council of revision, that is, that it was a power to examine and revise bills passed by both branches of the legislature, and to prevent their passage except by a two-thirds vote, by a statement of objections to the bills themselves. The convention were unanimous in transferring the power of revision from the council of revision to the executive alone, and the discussion was upon the question whether a two-thirds vote of each house should be required to pass bills notwithstanding the objections of the governor, as was required in the case of bills returned with objections by the council of revision, or whether a majority of each branch should be sufficient.

All the writers upon the constitution have regarded the qualified negative, or so-called veto power, as a revisionary power only. They have all discussed it as a power to return the bill for consideration only upon objections to its provisions.

Mr. Rawle spoke of this power as "this great share of the legislative power given to the president," and regarded its value as depending upon the fact that, by the use of it, the executive participated in the legislative power, and thereby called the two branches of the legislature to a reconsideration of their measures, and by requiring the measures to be entered on the journal, and the yeas and nays to be required, enabled the people to decide on the soundness of the objections.

Rawle on the Const., pp. 54, 55.

See also, Wilson's Law Lectures, pp. 449, 445.

Chancellor Kent speaks of the importance of the two houses having the objections of the president in opposition to the bill spread at large upon their journals to aid them in reconsideration.

Kent's Com. I. 240.

Judge Story, speaking of this power, said, —

"As a qualified negative it does not, like an absolute negative, present a categorical and harsh resistance to the legislative will, which is so apt to engender strife and nourish hostility. It assumes the character of a mere appeal to the legislature itself, and asks a revision of its own judgment. It is in the nature, then, merely of a rehearing or a reconsideration, and involves nothing to provoke resentment or rouse pride. A president who might hesitate to defeat a law by an absolute veto, might feel little scruple to return it for reconsideration upon *reasons and arguments suggested on the return.*"

Story on the Constitution (Cooley's ed.) section 888.

Mr. Curtis speaks of it as follows: —

"The two important differences between the negative thus vested in the President of the United States and that which belongs to the King of England are, that the former is a qualified while the latter is an absolute power to arrest the passage of a law; and that the one is required to render to the legislature the reasons for his refusal to approve a bill, while the latter renders no reasons, but simply answers that he will advise of the matter, which is the parliamentary form of signifying a refusal to approve. The provision in our constitution which requires the president to communicate to the legislature his objections to a bill, was rendered necessary by the power conferred upon two thirds of both houses to make it a law notwithstanding his refusal to sign it. By this power, which makes the negative of the president a qualified one only, the framers of the constitution intended that the two houses should take into consideration the objections which may have led the president to withhold his assent, and that his assent should be dispensed with, if, notwithstanding those objections, two thirds of both houses should still approve of the measure. These provisions, therefore, on the one hand, give to the president a real participation in acts of legislation, and impose upon him a real responsibility for the measures to which he gives his official approval, while they give him an important influence over the final action of the legislature upon those which he refuses to sanction; and, on the

other hand, they establish a wide distinction between his negative and that of the King in England. The latter has none but an absolute "veto;" if he refuses to sign a bill, it cannot become a law; and it is well understood that it is on account of this absolute effect of the refusal that this prerogative has been wholly disused since the reign of William III.,* and that the practice has grown up of signifying, through the ministry, the previous opposition of the executive, if any exists, while the measure is under discussion in parliament. It is not needful to consider here which mode of legislation is theoretically or practically the best. It is sufficient to notice the fact, that the absence from our system of official and responsible advisers of the president, having seats in the legislature, renders it impracticable to signify his views of a measure while it is under the consideration of either house. For this reason, and because the president himself is responsible to the people for his official acts, and in order to accompany that responsibility with the requisite power both to act upon reasons and to render them, our constitution has vested in him this peculiar and qualified negative."

Curtis' History of the Constitution, vol. II. book IV. ch. 9, pp. 265–267.

"This power was vested in the president, doubtless as a guard against *hasty or inconsiderate* legislation, and against any act *inadvertently* passed which might seem to encroach on the just authority of other branches of the government."

Webster's Works, vol I. p. 267.

For discussion of the effect of the use of the veto power in connection with the power of the executive to influence legislation by use of the appointing power, see Webster's Works, vol. II. pp. 236, 237. See, also, for further remarks by Webster on the use of the veto power, Webster's Works, vol. III. p. 416.

*This is not correct. It was exercised once since by Queen Anne, who vetoed the Scotch Militia bill in 1807.

An examination of the provisions of the Constitution of the United States and of the different state constitutions (a summary of which is given in the Appendix, pp. 32 *et seq.*), giving the executive a qualified negative upon the legislative branch of the government, shows clearly that one primary purpose of them all is to secure to the executive proper time to examine and deliberate upon bills presented to him, and, if he does not approve them, to state fully his objections to their provisions. The Constitution of the United States provides that the president may return the bill with objections, within ten days after it is presented to him, but that if "the congress, by their adjournment, prevent its return, the bill shall not be a law." In Connecticut, Iowa, Indiana, Kentucky, Minnesota, South Carolina, and Wisconsin, the governor may prevent a bill from becoming a law by returning it, with objections, within three days from the time it is presented to him. In Alabama, Arkansas, Florida, Georgia, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, Nevada, Nebraska, Oregon, Tennessee, Vermont, Virginia, and West Virginia, he may return it within five days. In Maryland, he may return it within six days. In California, Colorado, Illinois, Kentucky, Michigan, Missouri, New York, Pennsylvania, and Texas, he may return it within ten days.

Why all these careful provisions to secure to the executive time for the examination of bills and for deliberation upon their merits and the statement of any objections to their provisions, if he can perform his duty under the constitution by simply refusing to examine them or to express any opinion as to their merits, and negative them by the mere statement of objections to signing them and not to the bills themselves? Again, the examination of a bill is as essential to the disapproval of it by a return of it with objections, as it is

to the approval of it by signing it. Can it be claimed that the executive performs his duty under the constitution by signing a bill without examination of it and with a statement upon the bill that he expresses no opinion as to the merits of the bill by thus signing it? The signature of the executive to a bill implies an examination of it, because it is only "if he approve it" that he is to sign it. But would the mere signing a bill with a written statement upon it that it was thus signed without any examination and with no opinion as to its merits, be an exercise of the power to approve?

In Massachusetts, by the original constitution of 1780, the question whether if the legislature, by its adjournment, rendered it impossible for the governor to return a bill to the house in which it originated within the time thus limited at the session at which the bill is presented to him, he could exercise his qualified negative by returning it with his objections to that house in which it originated, at its next session, within the time limited, excluding the time which elapsed during the preceding session, was left uncertain, the provision being simply that if the bill should not be returned by the governor within five days after it was presented to him, it should have the force of a law. In 1810 the governor of the state acted upon the assumption that he could negative a bill in that manner; but the house to which he returned it on the first day of its next session, with objections, refused to reconsider the bill, on the ground that the return was too late, although the legislature which passed the bill had adjourned before the five days elapsed.

The result of this construction was that the legislature could not be adjourned until after all bills were signed or returned with objections for reconsideration, or the five days had elapsed within which the governor might return them with objections, so that they became laws without his signa-

ture. To remedy this difficulty and remove the uncertainty as to the true construction of this provision of the constitution, it was amended in 1820, by providing that, —

"If any bill or resolve shall be objected to or not approved of by the governor, and if the general court shall adjourn within five days after the same shall have been laid before the governor for his approbation and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law nor have force as such."

The reason stated in the convention for this change was that it was plainly the intention of the framers of the constitution that the governor should have five days within which to examine and deliberate upon bills presented to him, and that therefore, if the legislature by its adjournment prevent his having that time, the bills which he had thus been deprived of the constitutional time for examining ought not to become laws.

Journal Mass. Constitutional Convention, 1820, p. 97.

The Presidents of the United States since Washington have returned bills with objections as follows: Madison, 5; Monroe, 1; Jackson, 13; Tyler, 10; Polk, 3; Pierce, 10; Buchanan, 8; Lincoln, 1; Johnson, 21; Grant, 42 (including 4 private pension bills); Hayes, 12; Arthur, 4; Cleveland, 272 (including 243 private pension bills).* The messages returning these bills have, without a single exception, been statements more or less extended of objections to the provisions of the bills returned. An examination of them shows conclusively that the presidents have uniformly treated the constitutional provision giving the executive a qualified negative upon congress, as requiring the president to examine

* Veto Messages of Presidents, 1792 to 1888.

into the merits of the legislation, and if he does not approve the bill to return it with specific objections to its provisions. The most full statement upon this point was by President Buchanan in a message to the senate February 1, 1860, stating why he retained the bill making an appropriation for deepening the channel over the Saint Clair flats until after the adjournment of congress. He said, —

"The bill was presented to me on the last day of the last congress. It is scarcely necessary to observe that, during the closing hours of a session, it is impossible for the president, on the instant, to examine into the merits or demerits of an important bill, involving, as this does, grave questions, both of expedience and of constitutional power, with that care and deliberation demanded by his public duty, as well as by the best interests of the country. For this reason, the constitution has in all cases allowed him ten days for deliberation, because, if a bill be presented to him within the last ten days of the session, he is not required to return it either with an approval or a veto, but may retain it, "in which case it shall not be a law."

"Whilst an occasion can rarely occur when so long a period as ten days would be required to enable the president to decide whether he should approve or veto a bill, yet, to deny him even two days on important questions before the adjournment of each session for this purpose, as recommended by a former annual message, would not only be unjust to him, but a violation of the spirit of the constitution. To require him to approve a bill when it is impossible he could examine into its merits, would be to deprive him of the exercise of his constitutional discretion, and convert him into a mere register of the decrees of congress. I therefore deem it a sufficient reason for having retained the bill in question, that it was not presented to me until the last day of the session.

"Since the termination of the last congress, I have made a thorough examination of the questions involved in the bill to deepen the channel over the Saint Clair flats, and now proceed to express the opinions which I have formed upon the subject."

The present industrious Chief Magistrate of the United

States has added to the arduous duties of his office by the careful examination and precise statement of objections to two hundred and forty-three private pension bills, involving in many cases an extended examination of records and documents, all of which he might easily have avoided if he had understood that he could negative the bills without examination by returning them simply with objections to signing them because he thought congress was passing too many such bills, as he evidently did.

In New Hampshire this practical construction has been clear and conclusive as to the duty of the governor to examine and express his opinion of the merits of bills returned for nearly a hundred years.

A summary of the contents of all the messages of the governors returning bills not signed since the adoption of the constitution in 1792, is contained in the Appendix, pp. 1–31. It shows that the governors have returned 48 bills and resolves with objections; viz., Governor Gilman returned 14, Governor Langdon 6, Governor Plummer 14, Governor Bell 4, Governor Badger 1, Governor Hill 1, Governor Steele 2, Governor Baker 3, Governor Gilmore 4, Governor Smyth 1, Governor Harriman 1, Governor Prescott 1, Governor Hale 1, Governor Currier 1, Governor Sawyer 5 (including the one under discussion).

All the communications returning these bills and resolves (except that under consideration, and one of Governor Currier in 1885, returning a bill at the request of the house) have been precise statements of objections to the bills as the result of an examination and consideration of their provisions.

William Plummer, of Epping, was one of the most active and influential members of the New Hampshire constitutional convention of 1791, and chairman of the committee which

prepared that portion of the draft of the constitution submitted to the people containing the provision for the qualified negative of the governor.

Journal of Convention, pp. 150, 160.

He was afterwards governor of the state for four years. During his term of office he returned to one branch or the other of the general court fourteen bills and resolves without his approval, and the particularity with which he stated his objections to the provision of each indicated what he, and doubtless all others who were members of the convention, considered to be the nature and extent of the power conferred upon the governor by this provision of the constitution.

Washington was president of the convention which framed the United States Constitution, and when, as the first president under it, he had occasion to return bills to congress without his signature, he did so with messages which showed clearly what he considered the duty and power of the executive under this provision of the constitution was. The message stating objections to the first bill returned by him was as follows: —

"*Gentlemen of the House of Representatives:*

"I have maturely considered the act passed by the two houses, entitled 'An act for an apportionment of representatives among the several states, according to the first enumeration,' and I return it to your house, wherein it originated, with the following objections: —

"First. The constitution has prescribed that representatives shall be apportioned among the several states according to their respective numbers; and there is no one proportion or divisor which, applied to the respective numbers of the states, will yield the number and allotment of representatives proposed by the bill.

"The constitution has also provided that the number of representatives shall not exceed one for every thirty thousand, which restriction is, by the context, and by fair and obvious construction, to be applied to the separate and respective states, and the bill has allotted to eight of the states more than one for every thirty thousand.

"G. WASHINGTON."

February 29, 1797, Washington returned to the house "An act to ascertain and fix the military establishment of the United States," saying that he had "maturely considered the bill, and returned it with his objections," which he then stated in order, first, second, third, &c., as in his first message, all of them being precise objections to the provisions of the bill. Upon reconsideration of these bills, they both failed of a passage notwithstanding the objections, and new bills, in which the objections were obviated, were passed and approved.

Veto Messages of the Presidents of the United States, pp. 9, 10.

The language of the other presidents in their messages returning bills shows clearly that they all regarded it as essential for them to consider the bills and state objections to their merits. President Madison, who, as a member of the convention that framed the constitution, took a prominent part in the discussion of the article giving the president power to revise and negative bills passed by congress, began four of his five messages returning bills by saying, "Having examined and considered the bill," &c. His fifth message he began by saying, "Having bestowed on the bill entitled 'An act to incorporate the subscribers to the Bank of the United States of America,' that full consideration which is due to the great importance of the subject, and dictated by the respect which I feel for the two houses of congress, I

am constrained to return it with my objections to the same;" and closed his message by saying that "in discharging this painful duty of stating objections to a measure which has undergone the deliberations and received the sanction of the two houses of the national legislature, I console myself with the reflection that if they have not the weight which I attach to them, they can be constitutionally overruled."

President Monroe began his only message returning a bill (that for the preservation and repair of the Cumberland road) by saying that "Having duly considered the bill," &c.; and further said, "Having stated my objections to the bill, I should now cheerfully communicate at large the reasons on which they are founded if I had time to reduce them to such form as to include them in this paper." And later in the same day he transmitted a message giving his reasons at very great length.

President Jackson began his first message returning a bill by saying, "I have maturely considered the bill," &c.; and then proceeded to state objections to the provisions of the bill at length; and instead of saying at the close, as the governor of New Hampshire did in the message under consideration, "I VETO THE BILL," he said, "*I now respectfully return the bill which has been under consideration, for your further deliberation and judgment.*"

Neither President Jackson nor President Tyler, in any of their numerous messages returning acts of congress, failed to state distinctly that they had "maturely considered," or "carefully considered," or "fully considered" the bills themselves. The same course has been followed by all the presidents of the United States in substantially all the messages returning bills unsigned, and, in addition, none of them fail to show a careful examination of the merits of the bills

returned, and to give full and precise statements of objections to their provisions.

December 5, 1833, President Jackson returned to the senate "An act to appropriate for a limited time the proceeds of the sales of the public lands of the United States, and for granting lands to certain states," with a message saying that he received it at the close of the last session of congress, but the brief period then remaining before the rising of congress, and the extreme pressure of official duties unavoidable on such occasions, did not leave him "sufficient time *for that full consideration of the subject* which was due to its great importance;" and then proceeded very much at length to discuss the merits of the bill and state his objections to it. It was with reference to the retention of this bill that Henry Clay wrote to ex-President Madison asking whether, in his opinion, the president had not violated the constitution by thus retaining the bill and not returning it approved or disapproved. In Mr. Madison's reply he says:

"It is obvious the constitution meant to allow the president *an adequate time to consider the bill*, and, on the other hand, that congress should have time to consider and overrule his objections; and in order to qualify the retention of a bill by the president, the first inquiry is whether *a sufficient time was allowed him to decide it on its merits;* the next, whether, with a sufficient time to prepare his objections, he unnecessarily put it out of the power of congress to decide upon it."*

Madison's Works, vol. IV. p. 299.

With the exception of the message of Governor Ames, of Massachusetts, returning the bill for the division of the town of Beverly, in May, 1887, and that of Governor Sawyer, of New Hampshire, returning the bill under discussion, in

* The italics are mine.

October of the same year, the uniform and unbroken practical construction of this constitutional provision has been that it required the examination of the bills themselves and a statement of opinion as to their merits. Neither of these governors was a lawyer, and it is evident that they had no legal advice in the preparation of these messages. They were both anxious to disapprove what they believed to be corrupt practices, and did not stop to inquire whether the constitution had authorized them to refuse to approve or disapprove the acts of the legislature for that purpose.

The message of Governor Ames indicates clearly that he did not approve of the bill to divide Beverly; but until he returned this bill without a statement of specific objections to its provisions, for the purpose, as he said, of rebuking the conduct of those who had procured its passage, it had never occurred to any council of revision, to any president of the United States, or to any governor of any state, that the power to approve or disapprove the acts of congress or of the state legislatures could be exercised without an examination of them, and an expression of opinion as to their merits.

There are very few reported cases in which the qualified negative of the executive upon legislation has been discussed, but in all the judicial opinions which have in any manner considered the question, the courts have treated this power as one of revision only, requiring by the executive an examination of the bill and a statement of objections to its provisions.

In *Harpending* v. *Haight*, 39 California, 189, which was a petition for mandamus to the governor to compel him to authenticate and deposit with the secretary of state a bill which had passed both branches and been presented to him, but which he claimed had been returned to the legislature

by sending it to the chamber of the house in which it originated with a message stating objections to it, and which the messenger, finding that house not in session, had returned with the message to the governor, the court held that the bill had not been returned to the house in which it originated, within the meaning of the constitution, and therefore had become a law by not being returned to that house with objections within the time limited by the constitution for such return, and that the governor could be ordered by mandamus to authenticate the bill and deposit it with the secretary of state as required by the statute of California. In discussing the question whether the governor made the return of the bill required by the constitution, the court said, —

"There can be doubt whatever of the meaning of the word 'return,' as used in this connection in the constitution. As applicable to the bill itself, it is equivalent to the word 'presented' as previously used in the same sentence. The bill must, before it becomes a law, be 'presented to the governor.' It might be merely exhibited to that officer; and even if it should be immediately thereafter taken away or withdrawn, it might be contended that it had, nevertheless, been 'presented' within the very letter of the constitution. But when we come to reflect that *the only purpose for which the bill is to be 'presented to the governor' is to afford him an opportunity to deliberately consider its provisions and prepare his objections*, if any he have, to its passage, we would instinctively reject such a presentation as being fictictious — merely spurious — and certainly not that one contemplated by the constitution, because it would defeat, rather than promote, the very objected intended.

"And so, upon the other hand, when we come to consider the corresponding duty of the executive to 'return' the bill to the senate in this case, we know by attending to the results to be brought about by such 'return' that it must be a step taken by which his own time for deliberation is ended, and that for the deliberation of the senate is begun; that the bill itself must be put beyond the executive possession; that it must be placed into the possession,

actual or potential, of the senate itself; and that, as part of this return, the executive objections to the passage of the bill must be stated. For, unless these things be effected by the return, how can the senate enter the bill and executive objections upon its journal, or in what way proceed to the consideration of the objections themselves? Yet the constitution enjoins upon the senate the performance of these several acts upon the return of the bill and objections to it. We think it clear that the presentation of a bill to the governor made by the legislature, under such circumstances as that he is prevented from considering its provisions, and a return of a bill made to the house in which it originated by the executive — but so made that the house can neither reconsider the bill nor examine the objections to its passage — do not in either case constitute the presentation or return required by the constitution."

In discussing this provision of the constitution in *Wolf* v. *McCall*, 76 Va. 885, the court said that it requires bills "to be presented to the governor in such a way that he will be able to consider the merits or demerits of a bill, deliberate upon it, and finally determine whether he will approve or disapprove of it."

It thus appears not only by the proper construction of the language of this provision of the constitution, but by the history of its growth and adoption and by its practical construction for a hundred years, that an examination and expression of opinion of the bill itself either by approval of it by signing it or by the statement of objections to it which are the result of such examination, is essential to the exercise of the power given by it, and that the mere return of a bill without entering upon its merits and with no objections to the bill itself is of no effect.

It is said by plaintiff's counsel that the communication of the governor as to this bill is not the "first instance where a governor of New Hampshire has avowedly exercised the veto

power for reasons having no reference to the intrinsic merits of the proposed measure." And in proof of this, counsel print in their brief a communication from Governor Currier, in 1885, returning a house bill without his signature, after a joint resolution requesting him to return the bill for amendment had passed the house and failed in the senate, and in which he said, "I should deem it an act of discourtesy to permit a bill to become a law after the house had so strongly expressed a desire to have it returned for amendment, and therefore, without expressing any opinion with regard to the merits of the bill, I place it again in your hands." If counsel seriously claim that this message was a disapproval of the bill and a return of it with objections within the meaning of the constitution, they are not only wrong, I submit, upon the plain reading of the constitution and of the message itself, but their contention is wholly met by the decision of the Supreme Court of Virginia, in *Wolf* v. *McCall*, 76 Va. 885,890, where in a case of a bill returned by the governor in response to a joint resolution of the legislature requesting it, the Court held that the bill became a law by the lapse of the five days limited by the constitution, notwithstanding it was thus returned because it was not returned with objections to the bill, but merely as a matter of courtesy on the part of the governor towards the legislature.

The communication of Governor Ames, of Massachusetts, returning the bill for a division of the town of Beverly in 1887, referred to in the brief of plaintiff's counsel, was undoubtedly the model upon which the communication of the governor of New Hampshire returning the bill under discussion in this case was formed. But in that case the message clearly indicated that the opinion of the governor was against that of the legislature upon the merits of the bill. He said, "If it [the bill] involved only the question of the division

of the town of Beverly, I should hesitate to set up my opinion against that of the legislature," plainly indicating that his opinion was against the bill upon its merits. The objection urged to that message was not that the governor had failed to indicate his opinion of the bill, as was done by the governor in this case, but that he had failed to state objections to the bill itself, and had only stated objections to the conduct of those who had promoted and opposed its passage. In this respect it was considered then by some of the ablest members of the profession in Massachusetts, that the message was not a valid exercise of the qualified negative power. The question could not, however, be practically raised and tested in that case without more difficulty and greater delay than would attend another application to the legislature, which was to sit again within seven months. The fact, however, that the message did not state objections to the bill itself excited much comment, and I think it is safe to say that no governor of Massachusetts will again risk the validity of the exercise of his qualified negative by a communication which states no objection to the bill. That communication and the communication of the governor of New Hampshire in the case under discussion are the only communications by any council of revision, or any president of the United States, or any governor of any state, in which a bill has been returned with objections which had nothing to do with the merits of the bill returned, during the century which has elapsed since the power of revision and qualified negative of legislative acts was first given.

In *Birdsall* v. *Carrick*, 3 Nevada, 154, cited by plaintiff's counsel, the bill was returned by the governor with the statement that upon examination of it he found the enrolled copy was not signed by the secretary of state as required by the law of the state, and that in his opinion this was so fatal that

his approval would not give the bill the authority of law; and the court held that this was an objection to the bill within the meaning of the constitution, because it was stated as an objection *to the bill*. The fact that the court were of the opinion that it was not a valid objection was of no consequence, because the court have no power to pass upon the validity of the objections of the governor, but only to decide whether they are objections within the meaning of the constitution. The governor disapproved the bill because of an objection to it which he thought existed *upon examination of it*. He did not *refuse to examine it*, and he did not return it, as in this case, with a statement of objections *which had nothing to do with it*.

Plaintiff's counsel quote the language of an article in 21 American Law Review, page 214, by Mr. Sidney A. Fisher, who seems to regard the function of the executive in approving or disapproving a bill as precisely the same which a member of the legislature exercises when he votes for or against a bill, because as he says, and the plaintiff's counsel say, "The same word 'approve' is applied to the governor and the legislature alike. If he 'approve,' and if approved by two thirds of that house, and this same word 'approve' is used as synonymous with 'agree to pass the bill.' The latter phrase is used with reference to one house, and the former with reference to the other house."

This, however, is a mere play upon words, and cannot control the obvious purpose of the provision to require the executive to examine and approve or disapprove legislative acts upon their merits. As a matter of fact, the word "approve," although used in the Constitution of the United States, and of New Hampshire and most of the other states as to one house, is not used as to either house in many of the state constitutions. In California, Florida, and Nevada, the

language is, "If the bills shall pass both houses," &c.; in Georgia, "Two thirds of each house may pass a law notwithstanding the governor's dissent;" in Iowa, "If it again pass both houses," &c.; in Maryland, as to the first house, "If it shall pass," and as to the second, "If passed by two thirds of the members," &c.; and in Missouri, as to the first house, "If two thirds vote in the affirmative," and as to the second house, "If the bill receive a majority of two thirds of the votes," &c. And there can be no doubt that the nature of the revisionary power given the executive by these constitutions is identical with that given by the Constitution of the United States and the constitutions of the other states.

The article from which this quotation is made is entitled, "Are the Departments of Government Independent?" It was written by Mr. Fisher, as he says, because he differs from the opinion of Attorney General Bates advising President Lincoln in 1861 that he had a constitutional right "in time of great and dangerous insurrection to arrest and hold persons known to have intercourse with the insurgents, and to refuse to obey a writ of *habeas corpus* to show cause why he held them" (10 Opinions Attorney General, p. 74), and to correct what Mr. Fisher terms "an inordinate respect for the opinions of the Supreme Court of the United States, which now amounts to a superstition." The remarks are under a portion of the article which deals with the question "whether the president may veto a bill because he thinks it unconstitutional, although the Supreme Court has decided the same sort of a bill to be constitutional," and which Mr. Fisher thinks he may do, because, in exercising the revisionary power with reference to the acts of the legislature, the president is exercising legislative power which is in its nature discretionary. But this opinion, which is probably not nearly as valuable as that of the learned counsel for the plaintiff themselves

upon this point, is wholly abroad of the question whether the executive can exercise the revisionary power *without examination of the bill*, or can exercise his qualified negative by returning the bill without any objections to its provisions. I do not think, from an examination of the article, that even Mr. Fisher considers the power of the executive to extend thus far.

APPENDIX.

Messages by New Hampshire Governors, with Reference to Bills not Signed.

1793.

Governor Bartlett, in his message adjourning the legislature, referred to three private bills authorizing certain persons to sell lands, in these words: "The short time I have had to consider them prevents my being able to approve them, or to point out with precision the objections that at present lie in my mind against them."

House Journal, June session, 1793, p. 107.

This, although not a veto message, indicates very clearly the opinion of Governor Bartlett that the exercise of the qualified negative by the governor required him to point out with precision the objections to the bill.

1794.

"An act to incorporate the Congregational Society in Claremont," enacted June 17.

Returned to the house June 18 by Governor Gilman, with the objection that it gave a religious society a common seal, which was not necessary, empowered it to hold a large amount of real estate without stating the purpose for which it was to be held, allowed the society to tax persons coming of age or moving into the town, but did not make the society itself taxable, and was inconsistent with the sixth article of the bill of rights. Upon the question of the passage of the

bill notwithstanding these objections, 2 members voted in the affirmative and 106 in the negative.

House Journal, June session, 1794, p. 79.

"An act in addition to an act prescribing the time and mode of redeeming real estate mortgaged or conveyed by deed of bargain and sale with defeasance," enacted January 14.

Returned by Governor Gilman to the house January 16, with objections that the provisions of the bill which he stated and discussed at length might not operate justly, and that under it the title to real estate would not be shown by the records, the proper place to ascertain it. Upon the question of the passage of the bill notwithstanding these objections, 57 members voted in the affirmative and 17 in the negative.

House Journal, November session, 1794, p. 140.

1795.

"An act for taxing lands and buildings of non-residents,"

Returned by Governor Gilman to the house December 31, with objections that the proposed tax on non-residents for the support of schools would be inequitable, because the proportion of schooling necessary in any town does not depend upon the quality or value of unimproved lands or buildings, but upon the number of persons wanting instruction, and the non-residents thus taxed would have no voice in the disposal of the money, and because the bill provides for an assessment according to an appraised value, but makes no provision for such appraisal. Upon the question of the passage of the bill notwithstanding these objections, 25 members voted in the negative and 96 in the affirmative.

House Journal, December session, 1795, p. 142.

1796.

Resolution directing "interest on all state notes, bills of the the new emission, and every other evidence of debt due from this state, to cease from and after July 31 next," passed December 5.

Returned by Governor Gilman December 10, with objection that the payment of such interest was directed by the act of January 16, 1782, for liquidating the public securities, and that the resolution would not repeal that act. Also that the resolution is an infringemnt on the engagements heretofore made by the legislature for the payment of the debt of the state. Upon the question of the passage of the resolve notwithstanding these objections, 1 member voted in the affirmative and 108 in the negative.

House Journal, November session, 1796, p. 86.

"An act for arranging the militia of this state into divisions," enacted December 8, 1796.

Returned by Governor Gilman December 12, with objection that no material inconvenience will arise if the militia are not thus divided, and that such division would dismiss certain officers in a manner heretofore unknown. Upon the question of the passage of the bill notwithstanding these objections, 69 members voted in the affirmative and 46 in the negative.

House Journal, November session, 1797, p. 93.

"An act fixing the time when interest on state notes, bills of new emission, and other evidences of debt shall cease," enacted December 13.

Returned to the house by Governor Gilman December 14, with objection that the "bill appears to be an infringement

of solemn engagements heretofore made by the legislature respecting the public debts of the state," and referring specifically to legislation upon that subject. Upon the question of the passage of the bill notwithstanding these objections, 100 members voted yes and 21 voted no.

House Journal, November session, 1796, p. 132.

"An act in addition to the laws now in force relating to proprietary matters," enacted June 14.

Returned to the house by Governor Gilman June 16, with objection that the provisions of the bill totally deprive the proprietors of lands of a privilege long had, and compel them to travel in many cases long distances to transact the necessary business relating to their property, and that it is not apparent that any considerable benefit would result to the inhabitants of the particular towns therefrom. Upon the question of the passage of the bill notwithstanding these objections, 113 members voted in the affirmative and 16 in the negative.

House Journal, June session, 1796, p. 81.

1797.

"An act to give a new trial to Josiah Sanborn in a certain action commenced against him by Samuel Holland, which had been tried and judgment entered therein by action of review, some time since held in the County of Grafton within this state," enacted December 13.

Returned to the house by Governor Gilman December 18, with objection that "The bill is predicated on the principle that the record of the verdict of the jury was altered. If this was the case, the governor must presume, until he has evidence to the contrary, that the court had sufficient

legal reasons therefor; but having no other evidence of the case except what is contained in the petition and bill, he cannot approve the bill." Upon question of passage of the bill notwithstanding these objections, 97 voted yes, 22 voted no.

House Journal, November session, 1797, p. 112.

1800.

"An act to incorporate James Mann and others by the name of the Consociate Society in Pembroke," enacted November 22.

Returned by Governor Gilman to the house November 27, with objection that as there are already two distinct religious societies in Pembroke, it is his opinion that the incorporation of a third by the name and on the principle contemplated in the bill will not have a tendency to promote the general tranquillity, and because the bill gives permission to the inhabitants of Bow and Allenstown to join said society, which may prove injurious to those towns. Upon the question of the passage of the bill notwithstanding these objections, 69 members voted in the affirmative and 65 in the negative.

House Journal, November session, 1800, p. 43.

"An act allowing a larger per centum of interest to purchasers of land sold at vendue by collectors of taxes than is by law now established," enacted December 2.

Returned by Governor Gilman to the house December 6, with the objection that, "While the law determines the rate of interest in other cases shall not exceed a certain per centum, there is no reason apparent to me why it should be increased in the case contemplated in the bill." Upon the question of the passage of the bill notwithstanding these

objections, 108 members voted in the affirmative and 25 in the negative.

House Journal, November session, 1800, p. 80.

1804.

Resolution "expressing the sentiments of the house and senate respecting the disorganizing sentiment inculcated through the medium of the press, and congratulating their fellow-citizens upon certain measures of the general government, and in the justice and wisdom of the President of the United States," passed June 13.

Returned to the senate by Governor Gilman, June 18, with objection that if the resolution referred to the purchase of Louisiana, he is not sufficiently informed as to the advantages of that purchase to enable him to congratulate his fellow-citizens thereon, and that such is his opinion respecting some measures of the administration, that he is not prepared to express the unlimited confidence stated by the resolution. Upon the question of the adoption of the passage of the resolution notwithstanding these objections, 5 senators voted in the affirmative and 5 in the negative.

Senate Journal, June session, 1804, p. 28.

"An act to divide the state into districts for the purpose of choosing representatives to Congress," enacted June 13.

Returned to the senate by Governor Gilman, June 20, with objection that in his opinion the choosing of representatives to congress, by the people of the state at large, "is most conformable to the spirit and letter of the Constitution of the United States, and therefore no qualified voter of the state should be debarred from voting for the whole number of representatives to which the state is entitled, unless some

great inconvenience results therefrom." And that no inconvenience has resulted from this method under the law enacted twelve years before and intended to be permanent. Upon the question of the passage of the bill notwithstanding these objections, 4 senators voted in the affirmative and 6 in the negative.

Senate Journal, June session, 1804, p. 33.

"An act to ratify an article proposed in amendment to the Constitution of the United States," enacted June 15.

Returned by Governor Gilman to the house June 20, with objection that the proposed amendment was a concession by the smaller states, and would give four or five of the larger states power to elect the President and Vice-President of the United States, and that no sufficient reason existed for thus amending the Constitution of the United States. Upon the question of the passage of the bill notwithstanding these objections, 76 voted in the affirmative and 68 in the negative.

House Journal, June session, 1804, p. 61.

"An act for the limitation of actions and for preventing vexatious suits," enacted December 12.

Returned by Governor Gilman December 14, with objection that the bill is not definite in its provisions, and that if carried out it would essentially change the former rights of individuals respecting real estate. Upon the question of the passage of the bill notwithstanding these objections, 110 members voted in the affirmative and 13 in the negative.

House Journal, November session, 1804, p. 103.

1805.

"An act in amendment of an act entitled An act to incorporate a company by the name of proprietors of Waterquechee Falls Canal, passed December 19, 1796," enacted June 13.

Returned by Governor Langdon to the house June 13, with objection that the power of the court to regulate the tolls of the company under the bill could not be exercised unless the company petitioned therefor, although it should amount to more than twelve per cent upon the capital. Upon the question of the passage of the bill notwithstanding these objections, 40 members voted in the affirmative and 93 in the negative.

House Journal, June session, 1805, p. 45.

1806.

"An act for taxing banks within this state," enacted June 19.

Returned by Governor Langdon to the house June 20, with objections that the tax imposed by the bill was unequal, unreasonable, and unjust, and against the spirit and letter of the constitution. Upon the question of the passage of the bill notwithstanding these objections, 90 members voted in the affirmative and 56 in the negative.

House Journal, June session, 1806, p. 77.

1807.

"An act to constitute a company of cavalry to be annexed to the 18th regiment," enacted June 16.

Returned by Governor Langdon to the house June 17, with the objection that a good company of cavalry already

belongs to said regiment, and the annexing of another would be injurious and expensive. Upon the question of the passage of the bill notwithstanding these objections, 16 members voted in the affirmative and 108 in the negative.

House Journal, June session, 1807, p. 76.

"An act to constitute two companies of cavalry in the 6th regiment," enacted June 16.

Returned by Governor Langdon to the house June 17, with the objection that more than one company of cavalry to a regiment would be injurious and expensive. On the question of the passage of the bill notwithstanding these objections, 15 members voted in the affirmative and 108 in the negative.

House Journal, June session, 1807, p. 83.

1808.

"An act empowering justices of the peace to deputize persons to serve precepts in certain cases," enacted December 22.

Returned by Governor Langdon to the house December 22, with the objection that the laws now in force for the service of precepts in all cases are a greater security to citizens than is provided in this bill. On the question of the passage of the bill notwithstanding this objection, 25 members voted in the affirmative and 76 in the negative.

House Journal, November session, 1808, p. 122.

1811.

"An act to incorporate John L. Sullivan and others by the name and style of the Merrimack Boating Company," enacted June 20.

Returned to the house by Governor Langdon June 21,

with the objection that "there has not been a day of hearing had on the subject matter of the bill, and that at the close of the session there is not time to fully consider the business." Upon the question of the passage of the bill notwithstanding this objection, 86 members voted in the affirmative and 68 in the negative.

House Journal, June session, 1811, p. 121.

1812.

"An act to incorporate John L. Sullivan and others by the name and style of the Merrimack Boating Company," enacted June —.

Returned by Governor Plummer to the house June 16, with objections that it does not appear that public necessity or interest requires such a corporation to be created; that the words of description of the extent of the privilege granted by the bill are uncertain, and that the corporation may restrain citizens from the use of the river, or impose such tribute as it pleases for such use. Also, that the bill is so drawn that it may give the exclusive right to the waters of the river; that there is no provision subjecting the property of the members of the corporation to the payment of their individual and private debts, and nothing requiring the clerk to be sworn; and that the whole property of the stockholders in the corporation is declared to be personal estate, to be transferred only by assignment of stockholders. Upon the question of the passage of the bill notwithstanding the objections, no members voted in the affirmative and 140 in the negative.

House Journal, June session, 1812, p. 89.

Resolution empowering the governor to "distribute as he may think proper among the militia when called into active service, the arms belonging to the state that are now in the hands of the commissary general," passed November —

Returned by Governor Plummer November 26, with the objection that by the resolution, the militia securing arms under it may hold them as their own property, no authority being given the governor to require them to be returned. Upon the question of the passage of the resolution notwithstanding this objection, no members voted in the affirmative and 126 voted in the negative.

House Journal, November session, 1812, p. 46.

Resolution granting to "John Goddard, Jeremiah Mason, and Daniel Webster for their services in revising, collecting, and reporting the bills for the criminal code and regulating the state prison, ninety dollars, and that they should also have and retain the laws which were procured for them by the late governor for their information in performing the duties assigned to them," passed December 16.

Returned by Governor Plummer December 17, with the objections that "It appears that the gentlemen named received law books or property of the state as follows: [enumerating the books], which books, to say nothing of the ninety dollars, would sell for more than the services of the commission at a fair price are worth. These books should not be disposed of at any price, being for the use of government and people." Upon the question of the passage of the resolution notwithstanding these objections, 143 voted in the negative and none in the affirmative.

House Journal, November session, 1812, p. 143.

"Resolution for the relief of Jeremiah Gerrish and Daniel Webster from a contract for which it is stated they were sureties for the late Timothy Dix, Jr., for the payment of a certain sum of money for a township of unimproved land that he purchased of the state in the year 1805," passed June 21.

Returned to the house by Gov. William Plummer, June 25, with objections that "It is not represented even that the original bargain was founded either in mistake or misrepresentation. . . . Since the death of said Dix they have not been able, by entering upon said wild, uncultivated lands, to take such actual possession as to foreclose the right of redemption and prevent the heirs at law or creditors of said Dix from redeeming the mortgage; and should individuals acquire title to the lands under cellectors' deeds, or as settlers, the state might be obliged to bring suit for breach of covenant in the deed contemplated to be given by said Gerrish and Webster, and if they should prove unable to respond to the damages awarded in such suit, the state would be without remedy." On the question of the passage of the resolve notwithstanding the objections, 8 members voted in affirmative and 145 in the negative.

House Journal, June session, 1816, p. 180.

1816.

"An act to incorporate sundry persons by the name of the Farmer's Bank," enacted June 21, 1816.

Returned by Governor Plummer to the house June 27, 1816, with objections that the authority to issue bills of credit ought not to be granted to a corporation; that the public interests did not require the establishment of another bank,

and also that the bill did not contain any provision requiring the bank to pay anything to the state for the *privilege* of transacting business, or requiring the bank to lend money to the state, if the exigencies of the treasury required, and that it did not contain any provision subjecting its officers to penalty for neglecting to pay bills when presented, and did not reserve any authority to the legislature, in case of such refusal, to repeal the act of incorporation. And further, because there was no provision in the bill to secure the payment of outstanding bills and debts at any time when the charter might be forfeited or terminated, or the corporation be dissolved by limitation. Upon the question of the passage of the bill notwithstanding the objections, 5 members voted in the affirmative and 121 in the negative.

House Journal, June session, 1816, p. 223.

"An act for the further suppression of vice and immorality," enacted June 25, 1816.

Returned by Governor Plummer to the house June 27, 1816, with objections that there was no public necessity for delegating further power to town corporations to exercise authority upon the subject contemplated by the bill; that the description of offences enumerated in the bill was too uncertain to subject citizens to arrest and imprisonment at the will of a single police officer; that the proceedings authorized were unnecessary and might be abitrary and exercised from bad motives. Upon the question of the passage of the bill notwithstanding the objections, 2 members voted in the affirmative and 86 in the negative.

House Journal, June session, 1816, p. 227.

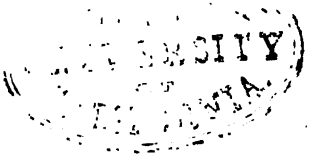
"An act in addition to an act entitled 'An act to incorporate sundry persons by the name of the President, directors, and company of the Cheshire bank,' passed December 24, 1803;" enacted December 14, 1816.

Returned by Governor Plummer to the house December 16, 1816, with objections that the bill contained no provision requiring the corporation to pay any equivalent for the grant of the right to make profits by banking into the state treasury; also that the bill authorized a private bank to make a separate branch not only of deposit, but for transacting all banking business, which was contrary to the policy of the state, and because it was questionable whether, if the branch bank, authorized by the bill to be established at Walpole should refuse to redeem its bills, the Cheshire bank at Keene would be holden to pay them. Upon the question of the passage of the bill notwithstanding these objections, 115 members voted in the affirmative and 63 in the negative.

House Journal, November session, 1816, p. 180.

Joint resolve declaring it "inexpedient to amend the Constitution of the United States upon the subject of electing representatives to the Congress of the United States and the appointment of electors of President and Vice President of the United States, as proposed by the Legislature of North Carolina."

Returned to the house December 25 by Governor Plummer "for reconsideration," with the objection that inasmuch as the object of the amendment proposed by the Legislature of North Carolina was to make provision for the division of each state into equal districts for the choice of representatives and electors, the principle of it was "correct and consonant with the principle established by the New Hampshire State Con-



stitution in the choice by districts of senators, and therefore he could not approve the resolve declaring such an amendment inexpedient.

At the same time the governor returned a similar resolve declaring it inexpedient to amend the constitution upon the same subject, as proposed by the Legislature of Massachusetts, stating that the same objections applied to the approval of that resolve as to the one in regard to the amendment proposed by the Legislature of North Carolina. No vote appears by the journal to have been taken upon the passage of these resolves notwithstanding the governor's objections.

House Jouunal, November session, 1816, pp. 253, 254.

1817.

Resolution for the "relief of Jeremiah Gerrish and Daniel Webster," passed June 23.

Returned to the house by Governor Plummer June 24, with the objections that the deed of one Dix to Webster and Gerrish, mentioned in the resolution, was not absolute but conditional, and there was no evidence that the heirs of Dix had been foreclosed of their right to redeem, nor whether Dix was ever in possession of the property, and no information as to the value of the property. Also that the resolution does not fix any time within which the deed from Gerrish and Webster to the state is to be executed and the balance of money paid to the treasurer. Upon the question of the passage of the resolution notwithstanding these objections, 4 members voted in the affirmative and 143 in the negative.

House Journal, June session, 1817, p. 183.

1818.

"An act to authorize and direct the clerk of the Court of Common Pleas of the County of Rockingham to issue an execution to be substituted in place of one already issued, but lost or destroyed," passed June 19.

Returned by Governor Plummer June 25, with objections—

First. That there was no legal evidence that such a judgment was ever rendered, or such an execution ever issued.

Second. That the petition upon which the resolution is based accuses one Tuckerman of a criminal act, and he does not appear to have had opportunity to appear before the legislature and deny it.

Third. That it does not appear that notice has been given to Tuckerman and others interested to present their objections to the bill.

Fourth. That to order the clerk to antedate an *alias* execution and make an entry of issuing it as of the same time as of the former execution, is contrary to the fact.

Fifth. Requiring the deputy sheriff to antedate his return, grants to him an authority with which our law has not invested deputy sheriffs.

Sixth. The plaintiff might have obtained an *alias* execution without applying to the legislature, and it is doubtful whether the proceedings under the bill would ensure a title to him. Upon the question of the passage of the bill notwithstanding these objection, 5 members voted in the affirmative and 112 in the negative.

House Journal, June session, 1818, p. 269.

"An act in addition to an act entitled 'An act for the equal distribution of insolvent estates;'" enacted June —

Returned to the house by Governor Plummer June 26, with objections that the bill is useless, because the present law covers the subject; that the bill would unsettle a long-established practice under the existing laws, and "might foster a spirit of litigation respecting former settlements injurious to the peace of society." Also that the provisions of the bill are ambiguous. Upon the question of the passage of the bill notwithstanding these objections, 120 members voted in the affirmative and 31 in the negative.

House Journal, June session, 1818, p. 284.

"An act to amend an act to incorporate the inhabitants of the northerly part of Gilmantown into a separate township with all the privileges and immunities of other towns in this state," passed June 24.

Returned to the house by Governor Plummer June 26, with the objections that the bill, if it has any validity, will impair or destroy rights now vested in the town of Gilmantown, against their will and without their knowledge. Upon the question of the passage of the bill, notwithstanding this objection, 6 members voted in the affirmative and 134 in the negative.

House Journal, June session, 1818, p. 290.

"An act to incorporate the Portsmouth Provident Society," enacted June 24.

Returned by Governor Plummer to the house June 29, with objections that the bill contains no definite object for which the corporation is to be established; that it is to hold $6000 worth of real estate which will not be subject to taxation, because "corporate property cannot be taxed unless in

pursuance of statute, and members of the corporation may thus avoid taxation." That the bill vests extensive authority for private and indefinite purposes in twenty men, seven of whom may admit or expel other members, and as it is a grant to individuals for twenty years, it is doubtful if future legislation can constitutionally repeal the grant, and "whatever evils follow, great caution should be used in enacting irrepealable laws." On the question of the passage of the bill notwithstanding these objections, 7 members voted in the affirmative and 106 in the negative.

House Journal, June session, 1818, p. 312.

In his message adjourning the legislature Governor Plummer, after naming the bills which he had returned with objections, mentioned "An act in addition to an act entitled 'An act to establish the rates at which polls and ratable estates shall be valued in making and assessing direct taxes, made and passed December 16, 1812,' which had not been approved or returned."

House Journal, June session, p. 338.

1819.

Resolution "imposing a penalty upon the commanding officers of the several regiments of the state who shall for a term of six months fail to make a return to the commissary general of the number of infantry in each town composing such regiments," passed June 29.

Returned by Governor Bell July 2, with the objections that an action cannot be maintained for the recovery of a penalty imposed by a resolution.

Upon the question of the passage of the resolution notwithstanding this objection, the resolution failed of a passage.

House Journal, June session, 1819, p. 368.

1820.

Resolution "allowing to James Dean $500, to Thomas C. Searl $300, and to Nathaniel H. Carter $184, in full of their salaries as professors of Dartmouth University," passed December 14.

Returned by Governor Bell Dec. 18, with the objection that he finds nothing in the acts of the legislature respecting Dartmouth University creating any obligation on the part of the state to pay the salaries of the officers of that institution, and and no evidence from the journals of the legislature, or the acts themselves, or from any source, that it was the intention of the legislature to guarantee such payment; that there is no evidence that the debts are due from the state, and if they are not it is not wise to impose the burden of mere donations upon the citizens of the state in this time of pressure and embarrassment. Upon the question of the passage of the resolution notwithstanding these objections, 98 voted in the affirmative and 78 in the negative.

House Journal, November session, 1820, p. 292.

Resolution "allowing Eliza B. Woodward, executrix of the last will of William H. Woodward, deceased, $471.15 in full for the services of William H. Woodward, and in full for moneys by him advanced as secretary and treasurer of Dartmouth University," passed December 18.

Returned to the house by Governor Bell, with the same objections returned with the resolution passed December 14 with reference to the salaries of the officers of Dartmouth University. Upon the question of the passage of the resolution notwithstanding these objections, 72 members voted in the affirmative and 77 in the negative.

House Journal, November session, 1820, p. 345.

"An act to incorporate Thomas S. Bowles and others into a charitable society by the name of Pythagoras Lodge, No. 33," enacted June 19.

Returned by Governor Bell to the house June 21, with the objection that the bill creates a private corporation with the right to acquire and hold real and personal estate without limitation of amount, whereby the corporation could accumulate large sums and "appropriate them to purposes inconsistent with the public good, and not in the power of the legislature to provide an adequate remedy against." Upon the question of the passage of the bill notwithstanding these objections, 1 member voted in the affirmative and 144 in the negative.

House Journal, June session, 1820, p. 240.

1835.

"An act to establish a corporation by the name of the Franklin Manufacturing Company," enacted June 16.

Sent by Governor Badger to the house June 19, with the objection that no definite place of location is named in the bill, and it is "questionable how far the corporation may be amenable to the laws and judicial tribunals of this state." These objections being read, the bill was laid upon the table, and subsequently returned to the governor with a resolution informing him that it did not originate in the house.

House Journal, June session, 1835, p. 111.

1837.

Resolve "to pay $200 to the selectmen of the town of Hampton for the benefit of Joseph L. Shaw, late a convict in the state prison, whose legs have been amputated by reason of their having been frozen while in said prison."

Returned by Governor Hill July 7, 1837, with the objec-

tion that the expense of the maintenance of Shaw should be borne by the town of Hampton, and that for the state to contribute thereto would establish a dangerous precedent and consume much time of the legislature, and incur large additional state expense. Upon the question of the passage of the resolve notwithstanding the objections, 26 members voted in the affirmative and 104 in the negative.

House Journal, June session, 1837, p. 263.

1844.

"An act to incorporate the Trustees of Donations to the Protestant Episcopal Church."

Returned by Governor Steele to the house December 24, 1844, with objections that the bill created "a self-perpetuating board of trust beyond the control of the societies and churches for whose benefit the act was intended;" also that all the power which ought to be given as to the matter covered by the bill was already given by the general law, and if not, the defect should be remedied by an amendment of the general law rather than by special legislation. The message argues at length the dangers of special legislation as to matters which can be covered by a general law. Upon the question of the passage of the bill notwithstanding the objections, 29 members voted in the affirmative, 150 in the negative.

House Journal, November session, 1844, p. 270.

"An act in addition to an act to incorporate the Proprietors of Dalton Bridge."

Returned by Governor Steele November 6, 1844, to the house, with objections that the bill contained no provision making the stockholders liable in their private capacity for debts and damages, nor any provision reserving to the legisla-

ture the right to alter, amend, or abolish any of its provisions. The message concludes with these words: "For these reasons I deem it incumbent on me to return said bill to the house of representatives, whence it originated, and respectfully request their attention and reconsideration to the whole matter." Upon the question of the passage of the bill notwithstanding the objections, 4 members voted in the affirmative, 189 in the negative.

House Journal, November session, 1844, pp. 128, 131.

1845.

Governor Steele, in adjourning the legislature at its request, said that the late hour at which "an act in addition to and in amendment of the laws of this state" was received by him, effectually prevented "that consideration which the importance of the bill demanded," and that, believing that its passage would destroy that which it was intended to meet, he was unable to give it his signature, and had not time to return it with his objections thereto, therefore he neither signed it nor returned it.

House Journal, June session, 1845, p. 336.

1854.

"An act in amendment of an act entitled 'An act to establish the city of Concord.'"

Returned to the house July 12, 1854, by Governor Baker, with the objection that "the legislature has no constitutional right to *prohibit the use* of all intoxicating drinks," and therefore no constitutional right to delegate such power to municipal authorities, which the bill attempts to do. Upon the question of the passage of the bill notwithstanding, 5 members voted in the affirmative and 251 in the negative.

House Journal, June session, 1854, pp. 430, 434.

"An act to establish the city of Dover."

Returned by Governor Baker to the house July 14, with the same objections stated at length as those stated to the bill to amend the charter of the city of Concord. Upon the question of the passage of the bill notwithstanding, 1 member voted in the affirmative and 163 in the negative.

House Journal, June session, 1854, pp. 495, 498.

Resolution relative to the ventilation of the hall of the house of representatives.

Returned to the house by Governor Baker July 13, with the objection that the provision of the resolution authorizing the secretary of state to draw on the treasurer for the expense was contrary to the fifty-sixth article of the constitution, providing that money should be drawn by the warrant of the governor. Upon the question of the passage of the resolve notwithstanding, there were no votes in the affirmative and 182 in the negative.

House Journal, June session, 1854, pp. 492, 495.

1856.

"An act to incorporate the Belknap Aqueduct Company," and "An act to incorporate the Manchester Aqueduct," were stated by Governor Metcalf, in his message adjourning the legislature at its request, to have been held by him, because the late hour at which they were received, and the pressure of other business, had prevented him from returning them with his objections in season for any action upon them.

House Journal, June session, 1856, p. 484.

1864.

"An act for the relief of the creditors of the Sullivan Railroad Company."

Returned by Governor Gilmore July 1, 1864, to the house, with objections —

First. That the public interests would not permit the unlimited right of sale of one railroad corporation to another.

Second. That the bill granted an unlimited right to the trustees of the bonds to sell the mortgaged property so that the minority of the bondholders might be deprived of their security.

Third. That the bill did not clearly retain the right of amendment, alteration, and repeal of the charter of the new corporation constituted thereby, July 14, 1864.

Upon the passage of the bill notwithstanding, 229 members voted in the affirmative and 59 in the negative, and the bill passed.

House Journal, June session, 1864, p. 224.

"An act in relation to the Carroll County Bank."

Returned by Governor Gilmore to the house August 23, with objections that it did not provide that the stockholders should have an opportunity to subscribe for the authorized increase in proportion to their respective holdings, or that any notice should be given to them of such increase. Upon the question of the passage of the bill notwithstanding the objections, the motion was made and put that the bill be indefinitely postponed, upon which 172 voted in the affirmative and 24 in the negative.

House Journal, Special session, 1864, pp. 193, 200.

"An act to enable the qualified voters of this state engaged in the military service of the country to vote for electors of President and Vice President of the United States, and for representatives in congress."

Returned by Governor Gilmore to the house August 24, 1864, during the call of the yeas and nays upon a motion to adjourn, which was carried, and first read to the house as a portion of a message received from the governor on the 26th of August. This message, which was subsequently held by the court not to have been received within the time required by the constitution, stated that the act would, in the opinion of the governor, be unconstitutional.

On the 26th of August the house passed a resolution declaring that the act had become a law without the approval of the governor, and the justices of the Supreme Court subsequently held this to be the case.

House Journal, Special session, 1864, pp. 204, 216, 219. Opinion of Justices, 45 N.H. 607.

Resolution recommending the governor "to apply to banks and moneyed institutions of the state for a temporary loan."

Returned to the house by Governor Gilmore August 29, with objections, first, that it was not of a nature to require his signature; second, that it opened no resources of supply other than those which had been already employed; third, that the scheme of obtaining money in the manner proposed was impracticable and unwise. This message was referred to the committee on finance, who reported a resolution that the further consideration of the subject be indefinitely postponed, which was adopted.

House Journal, Special session, 1864, pp. 223, 241, 247.

1865.

"An act entitled 'An act in amendment of chapter 68, Revised Statutes, relating to the maintenance of bastard children.'"

Returned to the house by Governor Smyth June 30, 1865, with the objection that the act confers authority to make complaint, &c., not upon the board of county commissioners, but upon a minority of the commissioners, because by the distinct provisions of the bill the power is conferred upon any individual member thereof who may make complaint, although both his colleagues object. Upon the passage of the bill notwithstanding the objections, 6 members voted in the affirmative and 132 in the negative.

House Journal, June session, 1865, p. 251.

1868.

"An act in amendment of chapter 213, section 2, of the General Statutes, abolishing the usury laws."

Returned to the house July 3, 1868, by Governor Harriman, with objections that the act was not called for by public necessity, and would produce an additional burden upon the debtors of the state, especially upon the towns, and that the "granting to capital of a license to take any terms which the necessitous might be compelled to offer was not called for, but would be inexpedient and ill-advised." Upon the question of the passage of the bill notwithstanding the objections, 97 members voted in the affirmative and 173 in the negative.

House Journal, June session, 1868, p. 264.

1877.

"An act to incorporate the Magdalena River Railroad."

Returned by Governor Prescott to the house July 12, 1877, with objections that the bill authorized the construction and operation of a railroad in South America, and that the corporators named were mainly non-residents of New Hampshire, and that the bill might be used for improper purposes, and was not required by any interests or persons in New Hampshire. The question does not appear to have ever been stated upon the passage of this bill notwithstanding the objections.

House Journal, 1877, p. 447.

1883.

"An act to establish a board of railroad commissioners."

Returned by Governor Hale to the house September 12, 1883, with objections that the method of electing commissioners by the joint convention of the houses provided by the bill was unwise and an injurious method; that an officer to be commissioned by the governor should not be elected by the legislature, and that the provision of the bill providing that one commissioner must be learned in the law, and another, a civil engineer learned and skilled in his profession, was a violation of article 11 of the bill of rights declaring that "every inhabitant of the state having proper qualifications has equal right to elect and be elected into office." This bill was referred to the judiciary committee, who reported on September 14 that it was not expedient to pass the bill notwithstanding the objections of the governor, and reported the bill modified to conform to the suggestions of the governor's message. Upon the question of the passage of the bill notwithstanding the objections, 16 members voted

in the affirmative and 252 in the negative. The bill reported by the judiciary committee was then passed.

House Journal, June session, 1883, pp. 1110, 1125.

1885.

"An act to prohibit shooting and trapping in private grounds,"

Was returned by Governor Currier to the house August 14, with the following message: "I herewith return without my signature house bill No. 20, entitled 'An act to prohibit shooting in private grounds.' I should deem it an act of discourtesy to permit a bill to become a law after the house has so strongly expressed a desire to have it returned for the purpose of amendment. Therefore, without expressing any opinion in regard to the merits of the bill, I place it again in your hands." On a vote that the bill become a law notwithstanding its return, 43 voted in the affirmative and 178 in the negative.

House Journal, 1885, pp. 782, 793.

NOTE. — The "desire of the house" alluded to in this message was the passage by the house of a joint resolution, which was rejected in the senate, requesting the governor to return the bill for reconsideration.

1887.

"An act in relation to actions."

Returned to the house by Governor Sawyer October 6, 1887, with the objection that the "provisions of section 1 annul and invalidate the provisions of section 2, so that the bill as a whole has no force or meaning." The bill and measure were referred to the committee on the judiciary. On October 13 the committee reported a resolution that the vote whereby the bill was passed be reconsidered, and also reported the bill in a new draft, which obviated the objec-

tions of the governor. The vote whereby the bill was passed was reconsidered, the question being stated on the passage of the bill notwithstanding the objections of the governor, 182 members voted in the negative and none in the affirmative.

House Journal, 1887, pp. 735, 753.

1887.

"An act providing for the establishment of railroad corporations by general law."

Returned by Governor Sawyer to the house October 18, with objections that "without entering upon the intrinsic merits of the measure to express any opinion, I am moved to object to this bill for the reason that corrupt measures have been extensively used for the purpose of promoting its passage, and the representatives have been persistently followed and interfered with in the free performance of their legislative duties, and that while no evidence has been produced that any member of the legislature has been unfaithful to his trust and oath of office, yet to my mind it is conclusively shown that there have been deliberate and systematic attempts at wholesale bribery of the servants of the people in this legislature." The message was referred to the committee on the judiciary, who reported October 19, recommending that the house do not pass the bill. November 4 the bill was taken from the table and a preamble and resolution adopted by the house, declaring it to be the sense of the house that the objections made by the governor to the bill were not such as required by the constitution to prevent its becoming a law by the lapse of time without his signature, and that therefore the bill had become a law without the signature of

the governor, and directing it to be transmitted, together with the resolution of the house, to the secretary of state.

House Journal, pp. 781, 795, 943, 946, 951.

"An act regulating fares and freights on railroads, and to provide compensation to dissenting stockholders in case of railroad leases."

Returned to the house by Governor Sawyer November 4, with objections that the meritorious part of the bill was made a vehicle to carry through legislation which would, in the opinion of the governor, be detrimental to the best interests of the state, and also that the 6th section is in effect a re-enactment of an essential part of an act in relation to railroads returned on October 18, and that, therefore, the reasons given for refusing the executive signature to that bill applied to this bill. No action appears to have been taken upon this message or with regard to this bill.

House Journal, 1887, p. 960.

"An act to incorporate the Alliance Trust Company."

Returned by Governor Sawyer to the senate October 26, with objection that a general provision for the taxation of all loan and trust companies was embodied in the act, thus incorporating a general law into a private act. Upon the question of the passage of the bill notwithstanding the objections, 5 voted in the affirmative and 17 in the negative.

Senate Journal, 1887, p. 455.

Subsequently a bill without this provision was enacted and approved.

Senate Journal, 1887, pp. 469, 533, 548.

"An act to authorize a lease of the Northern Railroad."

Returned by Governor Sawyer to the senate November 1, with objection that the same reasons given for disaproving the bill returned to the house on October 18 without signature, applied to a large portion of this bill, and with the additional reasons that the roads proposed by the bill to be authorized to lease the Northern have no physical connection with it; that the interests of the state and of the Concord Railroad would be affected by the bill, and that it is questionable whether the best interests of the state would not be injured by the railroad consolidation which would result from the bill. Upon the question of the passage of the bill notwithstanding the objections, the bill and message were upon motion laid upon the table, from which they do not appear to have been taken.

Senate Journal, 1887, pp. 483, 486.

CONSTITUTIONAL PROVISIONS WITH REFERENCE TO REVISION AND NEGATIVE OF LEGISLATIVE ACTS IN THE UNITED STATES.

In the Constitution of the United States adopted by the convention September 17, 1787, the provision for revision and negative of acts of congress by the president is found in section 7, article I., as follows: —

"Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law."

Provisions of State Constitutions.

Alabama.

Section 16, article IV., of the original constitution of 1819 gave the power of revision and of qualified negative to the governor in the same manner in which the United States Constitution gave it to the president, except that it provided that the bill should become a law unless returned in five

days, and that it might become a law, notwithstanding the objection of the governor, by a vote *of a majority of the whole number of members elected to each house.*

The same provision was retained in the constitutions of 1865 and 1867, and is now section 13 of article V. of the constitution of 1875.

Arkansas.

The original constitution of 1836 contained the same provision as the original constitution of Alabama.

The constitution of 1864 retained the same provision, except that it was provided that the bill should be a law unless returned within *three* days. This provision was retained in the constitution of 1868, with the addition that the governor may "approve, sign, and file in the office of the secretary of state, within three days after the adjournment of the general assembly, any act passed during the last three days of the session, and the same shall become a law."

This provision was retained, and is now section 15 of article VI. of the constitution of 1874, except that the bill may be returned within five days, and that if the general assembly by their adjournment prevent its return within that time, it shall become a law, unless the governor shall "file the same, with his objections, in the office of the secretary of state, and give notice thereof by public proclamation within twenty days after such adjournment."

California.

Section 17, article IV., of the constitution of 1849 provides that every bill shall be presented to the governor. "If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the journal, and proceed to reconsider it. If, after such reconsideration, it

again pass both houses, by yeas and nays, by a majority of two thirds of each house present, it shall become a law notwithstanding the governor's objections;" and also provides that the bill, if not returned within ten days, shall become a law unless the legislature by adjournment prevent its return.

Colorado.

Section 11, article IV., of the constitution of 1876 gives the power of revision and negative to the governor in the same manner in which it is given to the president, with the additional provision, if the general assembly by their adjournment prevent the return of the bill, it shall become a law unless it is filed by the governor, with his objections, in the office of the secretary of state within thirty days after such adjournment.

Section 12 of this article also gives the governor power to approve of any part or parts of appropriation bills, and to disapprove of any item or item thereof, by transmitting to the house in which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto; in which case the items objected to are separately reconsidered, and the same course taken with each as is prescribed with relation to bills returned by the governor with objections.

Connecticut.

Section 12, article IV., of the constitution of 1818 gives the power of revision and negative to the governor in the same manner that it is given to the president, except that, if upon reconsideration each house shall again pass the bill, it shall become a law notwithstanding the objections of the governor, and that the bill must be returned within three days.

Delaware.

Neither the original constitution of 1792, nor the present constitution of 1831, provides for any revision or negative upon the acts of the legislature.

Florida.

Section 16, article III., of the original constitution of 1838 gave the power of revision and qualified negative to the governor in the same manner that it is given to the President of the United States, except that, upon the return of a bill with objections, it might be passed by a vote of a majority *of the whole number of members elected to each house*, and that it must be returned within five days.

The constitution of 1865 retained this provision, with a change requiring two thirds of the whole number of each house voting to pass the bill notwithstanding the governor's objections.

Section 27, article V., of the constitution of 1868 retains the provision of the constitution of 1865, with the additional provision that if the legislature, by its adjournment, prevent the return of the bill within five days, it shall be a law, "unless the governor, within ten days next after the adjournment, shall file such bill with his objections thereto in the office of the seeretary of state, who shall lay the same before the legislature at its next session, and if the same shall receive two thirds of the votes present it shall become a law."

Georgia.

The original constitution of 1777 did not provide for any revision or negative of legislative acts. Section 10, article III., of the constitution of 1789 provided that "The governor shall have the revision of all bills passed by both

houses before the same shall become laws, but two thirds of both houses may pass a law notwithstanding his dissent; and if any bill should not be returned by the governor within five days after it hath been presented to him, the same shall be a law unless the general assembly, by their adjournment, shall prevent its return." This provision was retained as clause 6, section 2, article III., of the constitution of 1865, with the change that Sundays should not be counted in the five days, and with the addition that the governor may approve any appropriation and disapprove any other appropriation in the same bill, and the latter shall not be effectual unless passed by two thirds of each house, and is now clause 6, section 2, article IV., of the constitution of 1868.

Illinois.

The original constitution of 1818 provided by section 19, article III., that "the governor and the judges of the Supreme Court, or a majority part of them," should be a council to revise all bills about to be passed into laws by the general assembly which should be presented to them, and that all bills which passed the senate and house should, before they became laws, be presented to the council for their revisal and consideration; and if upon such revisal and consideration it should appear improper to the council, or a majority of them, that any bill should become a law, they should return it, together with their objections thereto in writing, to the house in which it originated, who should enter the objections on their minutes and proceed to reconsider the bill; and if, upon such consideration, it should agree to pass the bill by a majority of the whole number of members elected, it should send the same, together with the objections, to the other branch of the general assembly, who should also re-

consider it, and if approved by a majority of all its members elected, it should become a law. This section also provided that if any bill should not be returned by the council within ten days after it was presented to them, it should be a law unless the general assembly, by their adjournment, prevented its return, in which case it should be returned by the council on the first day of the meeting of the general assembly after the expiration of the ten days, or be a law.*

The constitution of 1848 provided for the revision of legislative acts by the governor in the same manner in which revision of acts of congress is provided for by the United States Constitution, except that bills returned by the governor with objections could be passed by a *majority of the members of each house elected*, and that if the general assembly, by adjournment, prevented the return of a bill within ten days, it should be a law unless returned on the first day of the meeting of the general assembly after the expiration of said ten days.

Section 21, article IV., Ill. Const. 1848.

The present constitution retains this provision of the constitution of 1848, except that it requires *two thirds of the members of each house elected* to pass a bill notwithstanding the objections of the governor, and provides that in case the general assembly, by adjournment, prevent the return of the bill within ten days, it shall become a law unless filed by the governor with his objections in the office of the secretary of state within ten days after such adjournment.

Section 16, article IV., Ill. Const. 1870.

* This provision, except as to the vote required to pass a bill returned, is a substantial copy of the provision of the New York constitution of 1777 establishing a council of revision.

Indiana.

The original constitution of 1816 copied the provision of the Constitution of the United States, except that it provided that a bill returned by the governor with objections might be passed by a majority of all the members elected to each house, and that it should be returned within five days or should become a law, unless the general assembly, by its adjournment, prevented its return, in which case it should be a law, unless returned within three days after their next meeting. This provision is retained in the constitution of 1851, with the addition that if the return of a bill is prevented by the adjournment of the assembly within the five days, it shall be a law unless the governor, within five days next after such adjournment, shall file it with his objections thereto in the office of the secretary of state, who shall lay the same before the general assembly at its next session in like manner as if it had been returned by the governor, but that no bills shall be presented to the governor within two days next previous to the final adjournment of the general assembly.

Section 14, article V., Ind. Const. 1851.

Iowa.

The original constitution of 1846 gave the power of revision to the governor in the same manner in which it is given to the president, but provided that the bill should become a law unless returned within three days after it was presented to the governor, unless such return was prevented by the adjournment of the general assembly, and provided that any bill submitted to the governor for his approval during the last three days of a session of the assembly should be deposited by him in the office of the secretary of state

within thirty days after the adjournment with his approval or with his objections thereto.*

Section 16, article III., Iowa Const. 1846.

The constitution of 1857 retains these provisions as sections 16 and 17, article III.

Kansas.

The original constitution of 1855 gave the power of revision to the governor in the same manner as it is given to the President of the United States, except that any bill not returned by the governor within five days became a law, unless the general assembly, by adjournment, prevented its return, in which case it also became a law unless sent back within two days after the next meeting.

Section 19, article V.

The constitution of 1857 retained this provision, except that it provided that a bill not returned by the governor within six days should be a law, unless the legislature, by their adjournment, prevented its return, in which case it should not be a law.†

The constitution of 1858 adopted the same provision, except that it provided that a bill returned by the governor might be passed notwithstanding his objections, *by a majority of each house*, and that a bill not returned within three days should be a law unless the general assembly, by adjournment, prevented its return.

* Section 17 of this article provided that no bill should be passed unless by the assent of a majority of all members elected to each branch or the general assembly, and that the question upon the passage of all bills should be taken immediately upon its last reading, and by yeas and nays entered on the journal.

† This was the constitution which was known as the Lecompton pro-slavery constitution.

The present constitution of 1859 adopts the provision of the United States Constitution, except that it requires a vote of two thirds *of all the members elected* to each house to pass a bill returned by the governor notwithstanding his objections, and provides that if a bill is not returned within three days, it shall become a law unless the legislature by its adjournment prevents its return; in which case it shall not.

Section 14, article II.

Kentucky.

The original constitution of 1792 adopted the provision of the United States Constitution, except that it provided that if the general assembly by their adjournment prevented the return of a bill within the ten days, it should be a law unless sent back within three days after their next meeting.

The constitution of 1799 retained this provision, except that it provided that a bill returned by the governor might be passed by *a majority of all members elected to each house;* and the constitution of 1850 retains this provision of the constitution of 1799 as section 22, article III.

Louisiana.

The original constitution of 1812 adopted the provision of the Constitution of the United States, except that it required a vote of two thirds *of all the members elected to each house* to pass a bill returned by the governor, and provided that if the general assembly by their adjournment prevented the return of the bill within ten days, it should not be a law if returned, with objections, within three days after their next meeting.

The constitution of 1845 and the constitution of 1852 retained this provision of the constitution of 1812, and the

constitution of 1864 also retained this provision, with the exception of that part which provided that in case the general assembly by its adjournment prevented the return of a bill within ten days, it should be a law unless sent back within three days after the next meeting of the assembly, which was not retained.

The constitution of 1868 retains this provision, except that a bill may be passed by a two-thirds vote of all the members present in each house, and that a bill not returned within five days shall be a law unless the general assembly by adjournment prevent its return; in which case it shall be a law, unless returned on the first day of the meeting of the general assembly after the expiration of five days.

Article LXVI.

Maine.

The constitution of 1820 adopts substantially the provision of the United States Constitution, except that it specifically provides that a bill reconsidered and passed by a two-thirds vote of each house "shall have the same effect as if it had been signed by the governor," and that any bill or resolution not returned within five days shall "have the same force and effect as if he [the governor] had signed it," unless the return is prevented by the adjournment of the legislature; "in which case it shall have such force and effect unless returned within three days after their next meeting."

Section 2, article IV., part III.

Maryland.

The original constitution of 1776 vested the legislative power in a senate and house of delegates, and contained no provision for the revision or negative of their acts.

The present constitution of 1859 adopts the provision of the United States Constitution, except that it requires a vote of two thirds *of all the members elected* to each house to pass a bill returned by the governor notwithstanding his objections, and provides that if a bill is not returned within three days, it shall become a law unless the legislature by its adjournment prevents its return; in which case it shall not.

Section 14, article II.

Kentucky.

The original constitution of 1792 adopted the provision of the United States Constitution, except that it provided that if the general assembly by their adjournment prevented the return of a bill within the ten days, it should be a law unless sent back within three days after their next meeting.

The constitution of 1799 retained this provision, except that it provided that a bill returned by the governor might be passed by *a majority of all members elected to each house;* and the constitution of 1850 retains this provision of the constitution of 1799 as section 22, article III.

Louisiana.

The original constitution of 1812 adopted the provision of the Constitution of the United States, except that it required a vote of two thirds *of all the members elected to each house* to pass a bill returned by the governor, and provided that if the general assembly by their adjournment prevented the return of the bill within ten days, it should not be a law if returned, with objections, within three days after their next meeting.

The constitution of 1845 and the constitution of 1852 retained this provision of the constitution of 1812, and the

constitution of 1864 also retained this provision, with the exception of that part which provided that in case the general assembly by its adjournment prevented the return of a bill within ten days, it should be a law unless sent back within three days after the next meeting of the assembly, which was not retained.

The constitution of 1868 retains this provision, except that a bill may be passed by a two-thirds vote of all the members present in each house, and that a bill not returned within five days shall be a law unless the general assembly by adjournment prevent its return; in which case it shall be a law, unless returned on the first day of the meeting of the general assembly after the expiration of five days.

Article LXVI.

Maine.

The constitution of 1820 adopts substantially the provision of the United States Constitution, except that it specifically provides that a bill reconsidered and passed by a two-thirds vote of each house "shall have the same effect as if it had been signed by the governor," and that any bill or resolution not returned within five days shall "have the same force and effect as if he [the governor] had signed it," unless the return is prevented by the adjournment of the legislature; "in which case it shall have such force and effect unless returned within three days after their next meeting."

Section 2, article IV., part III.

Maryland.

The original constitution of 1776 vested the legislative power in a senate and house of delegates, and contained no provision for the revision or negative of their acts.

No such provision was contained in the constitution of 1851 or the constitution of 1864, but the constitution of 1867 provides that "to guard against hasty or partial legislation, and encroachment of the legislative department upon the co-ordinate executive and judicial departments," every bill before it becomes a law shall be presented to the governor, who shall sign it if he approves it, and if not shall return it to the house in which it originated, and then, if *three fifths of the members elected to each house* "shall pass the bill," it shall become a law, but that if the bill be not returned within six days it shall be a law "in like manner as if he signed it," unless the general assembly by its adjournment prevent its return, in which case it shall not be a law.

Section 17, article III.

Massachusetts.

The original constitution of 1780 contained the following provision as article 2, chapter 1 : —

"No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve. But if, after such reconsideration, two thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: but in all

such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve shall be entered upon the public records of the commonwealth.

"And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law."

In 1821, the following amendment was adopted: "If any bill or resolve shall be objected to and not approved by the governor, and if the general court shall adjourn within five days after the same shall have been laid before the governor for his approbation, and thereby prevent his returning it with his objections, as provided by the constitution, such bill or resolve shall not become a law, nor have force as such."

Michigan.

The original constitution of 1835 adopted the provision of the United States Constitution, except that it specifically provided that a bill returned with objections might be passed by each house by a two-thirds vote of all the members *present*. The constitution of 1850 retains this provision, except that it requires two thirds *of the members of each house elected* to pass a bill returned with objections, and provides that if the legislature by their adjournment prevent the return of a bill within ten days, the governor may approve, sign, and file in the office of the secretary of state within five days after the adjournment of the legislature, *any act passed during the last five days of the session*, and the same shall become a law.

Section 14, article IV.

Minnesota.

The present constitution of 1857 adopts substantially the provision of the United States Constitution, but it specifically provides that if the governor approves a bill, "he shall sign and deposit it in the office of the secretery of state for preservation, and notify the house where it originated of the fact," and for the return of bills in three days instead of ten; and also provides that the governor may approve, and sign, and file in the office of the secretary of state, within three days after the adjournment of the legislature, *any act passed during the three last days of the session.*

Section 11, article IV.

Mississippi.

The original constitution of 1817 adopted the provision of the United States Constitution, except that it provided for the return of bills within six days instead of ten. The constitution of 1832 retained this provision, and the present constitution of 1868 retains it, except that it provides for the return of bills within five days instead of ten, and that in case the legislature by adjournment prevent the return of a bill, it shall be a law *unless sent back within three days after its next meeting.*

Section 24, article IV.

Missouri.

The original constitution of 1820 adopted the provision of the United States Constitution, except that it provided that a bill returned by the governor might be passed by a *majority of all the members elected to each house.* The constitution of 1865 retained this provision of the constitution

of 1820, with the addition that if the legislature prevented the return of a bill by adjournment within ten days after it was presented to the governor, he might sign and deposit the same in the office of the secretary of state within the ten days, and it should become a law in like manner as if it had been signed by him during the session of the general assembly. The constitution of 1875 provides for the presentation of bills to the governor on the same day on which they are signed by the presiding officers of the two houses, and that they shall become laws if returned to the house in which they originated, with the approval of the governor, within ten days thereafter; also that "every bill returned without the approval of the governor and with his objections thereto shall stand as reconsidered in the house to which it is returned. The house shall cause the objections of the governor to be entered at large upon the journal, and proceed at its convenience to consider the question pending, which shall be in this form: 'Shall the bill pass, the objections of the governor thereto notwithstanding?'" It also provides that if, upon the vote upon this question, "*two thirds of all the members elected to each house shall vote in the affirmative*, that fact shall be certified by the presiding officers upon the bill, and it shall thereupon be deposited in the office of the secretary of state, and become a law in the same manner as if it had received the approval of the governor.

It also provides that if the governor shall fail to perform his duty of approving or disapproving any bill presented to him, the general assembly may by joint resolution recite the fact of such failure and the bill at length, and direct the secretary of state to enroll the same as an authentic act in the archives of the state, and such enrollment shall have the same effect as an approval by the governor, and that such

joint resolution shall not be presented to the governor for his approval.

Sects. 37, 38, 39, 40, art. IV.

It further provides that the governor shall consider all bills and joint resolutions thus presented to him, and return them within ten days, "with his approval endorsed thereon, or accompanied by his objections;" but if the general assembly finally adjourn within the ten days, he may "within thirty days thereafter return such bills and resolutions to the office of the secretary of state with his approval or reasons for disapproval; and that the governor may disapprove any item of an appropriation bill while approving other items of the same bill, by returning a statement of the items disapproved to the legislature in the same manner as a bill disapproved, in which case the same proceedings shall be had as in case of the return of a bill; and that if the legislature be not in session, he may transmit the items thus approved and those disapproved, with his reasons for disapproval, within thirty days, to the office of the secretary of state.

Sects. 12, 13, art. V.

Nebraska.

The constitution of 1874 substantially adopts the provision of the United States Constitution, except that it requires a vote of *three fifths of the members of each house elected* to pass a bill notwithstanding the governor's objections, and that any bill not returned by the governor within five days shall become a law unless the legislature by adjournment prevent its return, in which case it shall become a law unless he files it with his objections in the office of the secretary of state within five days after such adjournment, and also that

the governor may disapprove any item or items of appropriation bills, which shall be stricken therefrom unless repassed in the manner prescribed in cases of disapproval of bills.

Section 15, article V.

Nevada.

The constitution of 1864 substantially adopts the provision of the United States Constitution, except that it requires a vote of two thirds *of the members elected to each house* to pass the bill notwithstanding the governor's objections, and also provides that "bills shall be returned within five days, unless the legislature by its final adjournment prevent such return," in which case they shall become laws, unless the governor within ten days next after the adjournment (Sunday excepted) shall file them with his objections thereto in the office of the secretary of state, who shall lay the same before the legislature at its next session in like manner as though they had been returned by the governor; and if the same shall receive the vote of two thirds of the members elected to each branch of the legislature, they become laws.

Section 35, article IV.

New Hampshire.

Neither the original constitution of 1776 nor the constitution of 1784 contained any provision for the revision and negative of legislative acts. The constitution of 1792 substantially adopts the provision of the Constitution of the United States.

Section 44, part 2.

New Jersey.

The constitution of 1776 contained no provision for revision or negative of legislative acts.

The constitution of 1844 substantially adopted the provision of the Constitution of the United States, except that it provides that bills returned with objections by the governor may be passed by a vote of the majority of the whole number of each house, but that "in neither house shall the vote be taken on the same day on which the bill shall be returned to it," and that bills shall be returned within five days instead of ten.

Clause 7, article V.

By amendment adopted in 1875, the governor may "object to one or more items of an appropriation bill while approving the other portions of the bill," by appending to the bill at the time of signing it a statement of the items to which he objects, and, if the legislature be in session, transmitting to the house in which the bill originated a copy of such statement, whereupon the items objected to shall be separately reconsidered, and such of them as may be approved by a majority of the members elected to each house shall be a part of the law notwithstanding the objections."

New York.

The original constitution of 1777 contained the following provision for revision and qualified negative of legislative acts: —

"III. And whereas laws inconsistent with the spirit of this constitution or with the public good may be hastily or unadvisedly passed: Be it ordained that the governor, for the time being the chancellor, and the judges of the Supreme Court, or any two of them, together with the governor, shall be and hereby are constituted a council to revise all bills about to be passed into laws by the legislature, and for that purpose shall assemble themselves from time to time when the legislature shall be convened, for which, nevertheless, they shall not receive any salary or consideration under

any pretence whatever. And that all bills which have passed the senate or assembly shall before they become laws be presented to the said council for their revisal and consideration; and if upon such revision and consideration it should appear improper to the said council, or a majority of them, that the said bill should become a law of this state, that they return the same, together with their objections thereto, in writing, to the senate or house of assembly (in whichsoever the same shall have originated), who shall enter the objections sent down by the council at large in their minutes, and proceed to reconsider the said bill. But if after such consideration two thirds of the said senate or house of assembly shall, notwithstanding the said objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall be law.

"And in order to prevent any unnecessary delays, be it further ordained that if any bill shall not be returned by the council within ten days after it shall have been presented, the same shall be a law, unless the legislature shall by their adjournment render a return of the said bill within ten days impracticable, in which case the bill shall be returned on the first day of the meeting of the legislature after the expiration of the ten days."

Article III. Const. 1777.

In the constitution of 1821, the provision of the United States Constitution was substituted for the foregoing provision, with the specific statement that two thirds "of the members *present* might pass the bill notwithstanding the governor's objections."

Section 12, Article I., Const. 1821.

The constitution of 1846 retained this provision of the constitution of 1821 as section 9, article IV. In 1874, this provision was amended so as to require a vote of two thirds *of the members elected to each house* to pass a bill notwithstanding the objections of the governor, and that if the leg-

islature prevent the return of a bill by adjournment within the ten days, the governor may approve it within thirty days after the adjournment; and also by a provision that the governor may object to one or more of the items of an appropriation bill while approving of the other portion of the bill, by appending to the bill, at the time of signing it, a statement of the items to which he objects, and, if the legislature be in session, transmitting to the house in which such bill originates, a copy of such statement, and that thereupon the items objected to shall be separately reconsidered, as in case of a bill returned with objections.

South Carolina.

Neither the original constitution of 1776, nor the constitution of 1868, nor the present constitution of 1876, contains any provision for revision or negative of legislative acts.

Ohio.

Neither the original constitution of 1802 nor the present constitution of 1851 contains any provision for the revision or negative of legislative acts.

Oregon.

The constitution of 1857 adopts substantially the provision of the Constitution of the United States, except that it specifically provides that two thirds "of the members *present*" may pass a bill, notwithstanding the governor's objections, and that the bill shall be returned within five days instead of ten, and if its return is prevented by the general adjournment of the legislature it shall be a law, "unless the governor, within five days next after the adjournment, files it with his objections thereto in the office of the secretary of state, who shall lay it before the legislative assembly at its

next session in like manner as if it had been returned by the governor."

Section 15, article IV.

Pennsylvania.

The original constitution of 1776 contained no provision for the revision or negative of legislative acts, but provided that, "to prevent the inconvenience of hasty determinations as much as possible," all bills of a public nature should be "printed for the consideration of the people before they were read in general assembly the last time for debate and amendment, and, except on occasions of sudden necessity, should not be passed into laws until the next session of assembly."

Section 15, Const. 1776.

The constitution of 1790 adopted the provision of the Constitution of the United States, with the exception that it provided that if the return of a bill by the governor within the ten days was prevented by the adjournment of the assembly, it should be a law "unless sent back within three days after their next meeting," and the constitution of 1838 retained this provision.

The constitution of 1873 retains this provision, with a change providing that if the return of a bill is prevented by the adjournment of the assembly within the ten days, it shall be a law unless the governor "shall file the same, with his objections, in the office of the secretary of the commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment," and with the addition of a provision that the governor shall have power to "disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the

part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto."

Sections 15 and 16, article IV.

Rhode Island.

This state adopted no constitution till 1842, and the constitution then adopted contains no provision for the revision or negative of legislative acts.

South Carolina.

The original constitution of 1776 provided that the "legislative authority be vested in the president and commander-in-chief, the general assembly, and legislative council," and that "bills having passed the general assembly and legislative council may be assented to or rejected by the president and commander-in-chief."

Article 7, Const. 1776.

Neither the constitution of 1778, or of 1790, or of 1865, contained any provision for revision or negative of legislative acts. The constitution of 1868 adopts the provision of the United States Constitution, except that it requires bills to be returned within three days, and provides that in case the general assembly by their adjournment prevent such return, they "shall not have force or effect as laws unless returned within two days after the next meeting of the assembly."

Section 22, article III.

Tennessee.

Neither the original constitution of 1796 nor the constitution of 1834 contained any provision for revision or negative of legislative acts. The constitution of 1870 adopts the provision of the Constitution of the United States, except that it provides that bills returned by the governor may be passed by a *majority vote of the members elected* to each house, and that bills and resolutions shall be returned within five days instead of ten.

Section 18, article III.

Texas.

The "Constitution of the Republic of Texas" provided that every act of the congress of the republic should be approved and signed by the president before it became a law, but that if the president would not approve and sign such act he should return it to the house in which it originated, "with his reasons for not approving the same," which reasons should be spread upon the journals of such house and the bill then be reconsidered, and should not become a law unless it should then pass by a yea and nay vote of two thirds of both houses; also, that if the president failed to return a bill within five days the same should become a law unless the congress prevented its return by adjournment.

Section 26, article I, Const. Republic of Texas, 1836.

The original constitution of Texas as a state of the United States in 1845 adopted the provision of the United States Constitution, except that it specifically provided that a bill returned by the governor might be passed by a vote of two thirds of the members *present*, that bills should be returned

within five days instead of ten, and if not thus returned should be laws in like manner as if signed by the governor, and also that every bill presented to the governor one day previous to the adjournment of the legislature and not returned before its adjournment, should become a law without his signature. (Section 17.)

The constitution of 1866 retained this provision, with the addition that the governor might "approve any appropriation and disapprove any other appropriation in the same bill, by designating in signing the bill the appropriations disapproved, and returning a copy of such appropriations with his objections, in which case the same proceedings should be had as to the appropriations thus returned as in the case of bills disapproved, and that if the legislature adjourned before a bill was returned, the governor might return it to the secretary of state with his objections," and also to the next session of the legislature. (Section 17.)

The constitution of 1868 retains this provision of the constitution of 1845 as changed by that of 1866, with the further change that if the legislature have adjourned before a bill is returned, the governor "may return it with his objections to the secretary of state, to be submitted to both houses at the succeeding session of the legislature." (Section 25.)

Vermont.

The original constitution adopted by the people of Vermont in 1777 vested "the supreme legislative power in a house of representatives of the Freemen or Commonwealth or State of Vermont," and the supreme executive power in a governor and council. It contained no definite provision for the negative of legislative acts, but provided that all bills of public nature before they were enacted should be laid before the governor and council "for their perusal and proposals of amendment,"

and be printed for the consideration of the people before they were read in general assembly for the last time of debate and amendment, and that except temporary acts, which after being laid before the governor and council might (in case of sudden necessity) be passed into laws, no acts should be passed until the next session of assembly. (Section 14.)

The original constitution of Vermont as a state adopted in 1786 contained this provision: "To the end that laws before they are enacted may be more maturely considered and the inconvenience of hasty determinations as much as possible prevented, all bills which originate in the assembly shall be laid before the governor and council for their revision and concurrence or proposals of amendment, who shall return the same to the assembly with their proposals of amendment (if any) in writing, and if the same are not agreed to by the assembly it shall be in the power of the governor and council to suspend the passing of such bills until the next session of the legislature. *Provided*, that if the governor and council shall neglect or refuse to return any such bill to the assembly with written proposals of amendment within five days or before the rising of the legislature, the same shall become a law. (Section 16.)

The constitution of 1793 retained this provision of the constitution of 1786, but in 1836 an amendment was adopted which substituted for it the provision of the United States Constitution, except that it provides that bills may be passed, notwithstanding the objections of the governor, *by a majority of each house*, and that if a bill should not be returned within five days after it is presented to the governor, it shall become a law unless the two houses by their adjournment within three days after the presentment of the bill prevent its return, in which case it shall not become a law.

Section 16, art. XI. Amdts. 1837.

Virginia.

Neither the original constitution of 1776 nor the constitution of 1830, 1850, or 1864 contained any provision for the revision or negative of legislative acts. The constitution of 1870, however, adopts the provision of the United States Constitution, except that it requires bills to be returned within five days instead of ten.

Section 8, art. IV.

West Virginia.

The original constitution of 1863, which appears to have been modelled upon that of Virginia, contained no provision for revision or negative of legislative acts. The constitution of 1872 adopts the provision of the United States Constitution, except that it provides that a bill returned with objections by the governor may be passed by a vote of *a majority of the members elected to each house*, that the bills shall be returned within five days, and that if the legislature by their adjournment prevent their return, they shall be filed by the governor, with his objections, in the office of the secretary of state, within five days after such adjournment, or become laws; and also that the governor may disapprove any item or appropriation in an appropriation bill containing distinct items in the same manner that he may disapprove a bill, and that the items not thus disapproved shall have the force and effect of law according to the original provisions of the bill.

Sections 14 and 15, art. VII.

Wisconsin.

The constitution of 1848 adopts the provision of the United States Constitution, except that it provides that bills shall be returned within three days.

Section 10, art. V.

SUMMARY.

Under the Constitutions of California, Florida, Georgia, Illinois, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, Oregon, South Carolina, Texas, Virginia, and Wisconsin, a vote of two thirds of each house is required to pass a bill returned by the governor with objections.

In Colorado, Iowa, Kansas, Michigan, Missouri, Nevada, Pennsylvania, and New York, a vote of two thirds of the members of each house elected is required to pass it.

In Nebraska and Maryland, a vote of three fifths of the members of each house elected is required to pass it.

In Alabama, Arkansas, Indiana, Kentucky, New Jersey, Tennessee, and West Virginia, a vote of the majority of the members of each house elected is required to pass it notwithstanding such objections.

In Connecticut and Vermont, a majority of each house is required.

In Connecticut, Indiana, Iowa, Kansas, Minnesota, South Carolina, and Wisconsin, the bill must be returned within three days.

In Alabama, Arkansas, Florida, Georgia, Louisiana, Maine, Massachusetts, Mississippi, Nebraska, New Hampshire, New Jersey, Nevada, Oregon, Tennessee, Vermont, Virginia, and West Virginia, within five days.

In Maryland, within six days.

In Illinois, Kentucky, New York, Michigan, Missouri, Pennsylvania, and Texas, within ten days, unless the legislature, by adjournment, prevent its return.

In case the legislature adjourns within the time thus given, that time is extended in Indiana, Nebraska, Oregon, and West Virginia, by a provision that the governor may file the

bill, with his objections, with the secretary of state, within five days after the adjournment. In Arkansas and Texas the bill and objections may be thus filed and notice given, by public proclamation, within twenty days after adjournment. In Colorado, Iowa, and Missouri, and Pennsylvania, the bill of objections may be thus filed within thirty days after adjournment. In Florida, Illinois, and Nevada, the bill and objection may be filed with the secretary of state within ten days after adjournment. In Kentucky, Maine, and Mississippi, the bill may be returned to the house in which it originated within three days, and in South Carolina within two days after the next meeting of the legislature..

In New York a bill may be approved by the governor within thirty days after the final adjournment of the assembly, and no bill can become a law after such adjournment without the approval of the governor.

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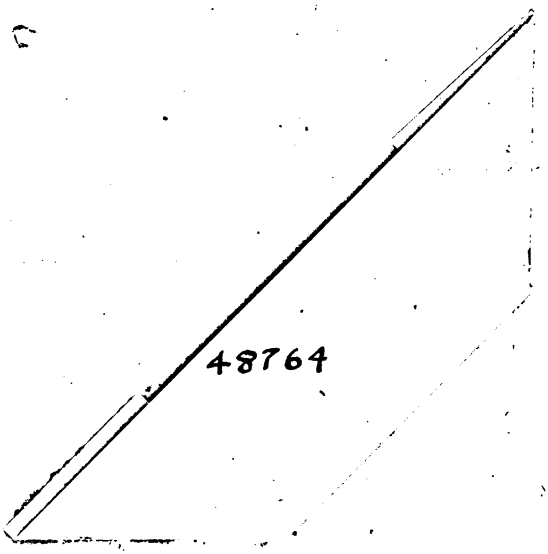

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